

## **RETAIL ACCESS SERVICE TARIFF**

### **1. Introduction**

This tariff is designed to express the terms and conditions associated with retail access service in the Detroit Edison Electric Choice Program, as well as provide information regarding the roles of the various market participants. This tariff includes the following sections:

Introduction and Definitions	Sec. 1
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In the Detroit Edison Electric Choice Program, Detroit Edison will maintain a relationship and interact with at least three separate participants. The Customer, the Alternative Electric Supplier and the Marketer. One entity may be responsible for both the AES and Marketer roles. Detroit Edison has separately defined the retail and wholesale functions behind electric supply in a competitive environment.

#### **1.1 The Customer Role**

The Customer is the end-user of Power at one or more locations in the State of Michigan who has facilities connected to the Detroit Edison distribution system. Under retail access service, the Customer will conduct transactions with at least two entities - Detroit Edison and an Alternative Electric Supplier. The Customer is responsible for choosing an Alternative Electric Supplier.

Detroit Edison's principal requirement is that the Customer must already be connected to the Detroit Edison Distribution System as a Full Service Customer or meet the requirements for new Customers connecting to the Detroit Edison Distribution System. All Primary Customers and Secondary Customers with Customer Service Capacities greater than 300 kW must execute Customer Distribution Agreements with Detroit Edison.

#### **1.2 The Alternative Electric Supplier Role**

An Alternative Electric Supplier is an entity that has obtained all the necessary legal approvals to sell retail electricity in Michigan.

The Alternative Electric Supplier buys products and services needed to provide power to Customers, combines these products and services in different marketing packages, and sells the packages to Customers. Alternative Electric Suppliers must meet all applicable statutory and regulatory requirements of Michigan and Federal law.

### **1.3 The Marketer Role**

The Marketer is an entity that acts as a wholesale supplier; takes title to power and has FERC authorization to market energy services. FERC authorization allows the Marketer to use transmission systems to move power from the generator(s) to the distribution system. The Marketer is either a FERC-authorized power Marketer or a utility. As defined by FERC, in the context of this Tariff, the Marketer is responsible for all Transmission-related responsibilities related to serving the retail access customers served by it's supply. These include: scheduling energy, obtaining ancillary services, and paying energy imbalance charges. The Alternative Electric Supplier and Marketer functions may be handled by one entity or may be performed by different parties. Either way, both the Alternative Electric Supplier role and the Marketer role must be performed to complete delivery to a Customer.

### **1.4. Definitions**

*"Aggregator"* means an entity that combines the energy consumption of multiple Customers for the purpose of meeting minimum load criteria necessary for retail access service.

*"Alternative Electric Supplier" (AES)* means an entity that has obtained all the necessary approvals to sell retail electricity in Michigan, and is licensed by the Michigan Public Service Commission. An AES does not physically deliver electricity directly to retail Customers in the state.:

*"Commission"* means the Michigan Public Service Commission.

*"Customer"* means, for purposes of retail access service, an entity with electrical load facilities connected to the Detroit Edison Distribution System that purchases or receives Power from an Alternative Electric Supplier and which Power is delivered to its Location(s) pursuant to this Tariff. All Customers, regardless of the voltage level of the service, are considered to be connected to the Detroit Edison Distribution System.

*"Customer Service Capacity"* means the load carrying capability of the Detroit Edison metering installation at the Customer's site, based on the thermal limits of the meter and any associated transformers.

*"Demand"* means the amount of power required to meet the Customer's load, generally expressed in kilowatts or megawatts, at a given instant or averaged over a designated interval of time.

*"Demand Conversion Table"* means a table that converts average kWh consumption to demand in kW, for a specific type or group of Customers. These tables will be used to determine the amount of limited phase-in capacity allocated to Customers without prior demand history as defined in Section 33.3..

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

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

*“Distribution Point of Delivery”* means the point of interconnection between the Detroit Edison Distribution System and the Customer’s service location.

*“Distribution Point of Receipt”* means the point of interconnection between the ITC Transmission and Detroit Edison Distribution Systems.

*“Effective Date”* is the date at which responsibility for servicing a Customer Load transfers from the current supplier to the new supplier. The transfer occurs at the beginning (00:01 hours) of the Effective Date.

*“Energy”* in the context of this document the word energy refers to “electrical energy” and is measured in kilowatt-hours.

*“Energy Meter”* means a meter capable of measuring and recording energy on a kWh basis.

*“Full Service”* means the provision of regulated electric service including, energy, transmission and distribution services each provided by Detroit Edison.

*“International Transmission Company (ITC) Transmission System”* means facilities operated by ITC for the purpose of transmitting electric power within the Detroit Edison electric service territory which are subject to the jurisdiction of the Federal Energy Regulatory Commission.

*“Interval Demand Meter”* means a meter capable of measuring and recording kW demands and/or kVAR demands on a 30-minute integrated basis, as needed to bill the Customer and measuring energy on a kWh basis.

*“Joint Open Access Transmission Tariff (JOATT)”* means the ITC and Consumers Energy Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission, as amended from time to time. The Tariff applies to transactions where energy flows through both the ITC and Consumers Energy Transmission Systems.

*“Load”* means any end-use device drawing energy from the electric system.

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

*“Marketer”* means an entity that:

- (i) generates, brokers, markets or otherwise procures power to be supplied to ITC at the Transmission Point of Receipt, obtains transmission services and with whom a Customer’s Alternative Electric Supplier has arranged for the receipt of Power,
- (ii) satisfies all applicable statutory and regulatory requirements of Michigan and Federal law, and
- (iii) satisfies all applicable reciprocity requirements set forth in this tariff.

*“Open Access Transmission Tariff (OATT)”* means the ITC pro forma Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission, as amended from time to time.

*“Power”* means a combination of the electric demand and energy requirements of the Customer.

*“Reactive Demand”* means the amount of reactive power required to meet the Customer’s Load, generally expressed in kilovolt-amperes reactive (kVAR), at a given instant or averaged over a designated interval of time.

*“Set-Aside”* means either of two special groupings of single-phase Customers designed to ensure that small Customers can participate in retail access service.

*“Sink”* means a unique four-character code assigned to a Marketer’s Transmission Service Agreement by ITC which identifies a load.

*“Transition Charge”* is a surcharge for the recovery of costs associated with the implementation of retail access service and Detroit Edison’s stranded costs arising from implementation of retail access service.

*“Transmission Point of Delivery”* means the point of interconnection between the ITC Transmission and Detroit Edison Distribution Systems.

*“Transmission Point of Receipt”* means the point on the ITC Transmission System where Power is received by ITC for delivery to the Transmission Point of Delivery.

## CUSTOMER SECTION

### **2. Terms and Conditions of Service**

**2.1** This Retail Access Service Tariff sets forth the rates, charges, terms and conditions of service for the delivery of Power to a Customer, procured by an Alternative Electric Supplier and supplied by a Marketer. Such Power shall be initially received at a designated Transmission Point of Receipt and ultimately delivered to the Customer through the Detroit Edison Distribution System.

**2.2** Power received by ITC for delivery to the Customer shall be transmitted across the ITC Transmission System to the Detroit Edison Distribution System in accordance with the rates, terms and conditions of service of the ITC Open Access Transmission Tariff.

**2.3** A Customer's eligibility to take retail access service is subject to the full satisfaction of any terms or conditions imposed by pre-existing contracts or tariffs with Detroit Edison. Customers must have satisfied any past due amounts owed to Detroit Edison under any other arrangements or provisions for electric service before taking service under this Tariff, unless such past due amounts are due to billing disputes; Detroit Edison's failure to obtain meter readings, provide an actual bill or otherwise fail to properly demonstrate amounts owed by the Customer to Detroit Edison. Rider No. 2 agreements between the Customer and Detroit Edison will remain in effect during service under this Tariff. No other riders are applicable under this Tariff..

**2.4** A Customer will specify only one Alternative Electric Supplier (and the Alternative Electric Supplier shall specify only one Marketer) at any given time for the supply of Power to each Customer account or Customer Location.

**2.5** Detroit Edison shall be required to complete, within 45 days, all open access enrollment activities. This deadline does not require that Customers actually commence service within 45 days only that Detroit Edison has completed all activities required of it to place the Customer in site-ready status.

Customers shall be permitted to change Alternative Electric Suppliers. The changes will become effective at the completion of their normal billing cycle. Customers will be assessed a \$5 processing charge per account for each change. The change will be submitted to Detroit Edison electronically by the Customer's new Alternative Electric Supplier as a new enrollment.

### **2.6 Multiple Meters at Non-Residential Locations**

**2.6.1** Existing groupings of multiple meters into accounts at a location will be maintained in setting up new retail access accounts. If possible, all the metered loads belonging to a single Customer at a location shall be grouped into a single account.

**2.6.2** Multiple metered loads at a single voltage level may be combined, at the Customer’s option, by physically re-wiring or by adding all metered quantities in the billing process.

**2.6.3** The Customer is responsible for any re-wiring costs or, alternatively, the costs of all meters used for combining the Location. If re-wiring is required by Detroit Edison to facilitate metering, then Detroit Edison shall be responsible for the re-wiring costs.

**2.6.4** When multiple Interval Demand Meters are used within a single voltage level, Maximum Demand at that voltage level will be established by the highest coincident demand recorded for those meters.

**2.7 Multiple Meters at Residential Locations**

All metered loads belonging to a single Residential Customer must be combined into a single metered load or account unless the Customer chooses to re-wire all loads through the principal meter at the residence, Detroit Edison will combine usage from all meters at the Customer’s residence during the billing process.. Interruptible rates are not available under retail access service. This does not apply to multi-family residential locations.

**2.8 Metering**

**2.8.1** All Load served under this tariff shall be metered. All Customers receiving electric service at 4,800 volts or greater shall be required to install Interval Demand Meters.

**2.8.2** Customers receiving electric service at 480 volts or less, through Detroit Edison-owned transformation will have metering requirements as follows:

Service	Required Metering
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Regular	Interval Demand Meter
Optional Service	Energy Meter

**2.8.3** Metering equipment for Customers taking retail access service shall be furnished, installed, read, maintained and owned by Detroit Edison.

## **2.9 Meter Reading**

**2.9.1** Customers with Interval Demand Meters and demands above 1000 kW, meter reading may be accomplished electronically through a Customer-provided telecommunication links or other electronic data methods able to provide Detroit Edison the metering data necessary to bill the customer and conform to required metering accuracy. In the event Detroit Edison maintains the customer on the same meter read cycles, it will be the Customer's option of installing data links for remote meter reading or allowing Detroit Edison to read by conventional means. The Alternative Electric Supplier shall direct access to meter data through the same means as Detroit Edison, once the Customer is enrolled, without any further documentation or permission from the Customer.

**2.9.2** If a Customer is not able to allow sharing of the telephone line, the Customer shall obtain a separate telephone line for such purposes paying all charges in connection therewith. The Customer is responsible for assuring the performance of the telephone line. If the telephone line used for metering is out of service, Detroit Edison will retrieve the data manually for a fee of \$12/ month (one reading). In the event that the telephone line service is out for three consecutive months, the Customer's retail access service may be terminated and the Customer may be transferred to service under Detroit Edison's full requirement tariffs subject to the provisions of Section 5.4.

**2.9.3** For Optional Energy Metered Customers, meters will be read by conventional means and the Customer will not be required to provide a telephone service.

**2.9.4** The switch of a Customer's account from one supplier to another will normally take place on the scheduled meter reading date for that Customer (the Effective Date) and be based on the reading made that same day. If an actual meter reading is not made on the Effective Date, Detroit Edison will read the meter within five (5) business days of the date in which Detroit Edison determines that the scheduled actual meter reading has not occurred. The meter reading on the Effective Date will be determined on a pro rated basis based on the actual meter reading. Detroit Edison's failure to read meters in the time

frames noted, through no fault of the Customer, shall not result in penalties of any type to the Customer. Except for actions outside the scope of Detroit Edison's control and storms or other events or occurrences that render the reading of meters physically impossible, customer's bills for Detroit Edison distribution services will be reduced by 1/30 for each day Detroit Edison meter reads are late past a three day grace period.

## **2.10 Meter Errors and Telephone Failures**

Billing where metering errors and malfunctions have taken place shall be performed as follows:

**2.10.1** For Energy Metered Customers where metered data is not available due to metering errors, malfunctions, or otherwise, the usage will be estimated using the procedure described in the billing rule B-4.2 (2) Estimated Billing.

**2.10.2** For Interval Demand Metered Customers where metered data is not available due to metering errors, malfunctions, or otherwise, the usage will be estimated using the available historical data for the Customer.

**2.10.3** Where incorrect billing results from calculation error discovered by either Detroit Edison, the Alternative Electric Supplier or the Customer, the error will be corrected and revised bills for the Customer and the Alternative Electric Supplier will be calculated and settled on the next billing period after the error is discovered. Billing errors discovered by Detroit Edison shall be adjusted as provided for in the Residential, Commercial, and Industrial Billing Rules.

**2.10.4** Liability for meter or calculation errors or malfunctions shall be assigned or apportioned to the appropriate party based on fault.-

## **3. Character Of Service**

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

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

**3.3** For Three-Phase Distribution Service, Detroit Edison provides service at differing voltages available in differing configurations within its service territory. These include,

but are not limited to, alternating current, three-phase service at nominal 4,800, 13,200, 24,000, 41,570 or 120,000 volts which may be transformed to lower voltages through Detroit Edison-owned transformation equipment. Where three-phase service is supplied at 480Y/277 volts through Detroit Edison-owned transformation equipment, the Customer must furnish any transformation for the supply of its 120/240 volt requirements. Customers who are considering locating new load or who are considering adding load at an existing Location should contact Detroit Edison to determine what service is available at a particular Location to serve their Load.

#### **4. Availability of Service**

**4.1** Until December 31, 2001, eligibility for retail access service will be determined using the open bidding procedure described in the bidding section of this tariff, as authorized by the Commission in their March 8, 1999 order in case number U-11290. The amount bid becomes the amount of the Transition Charge to be paid by the Customer for all kWh consumed through December 31, 2001 by Customers taking retail access service. Retail access service will continue for these Customers through the transition to full retail access on January 1, 2002. However, Transition Charges will change as described in Section 4.2.

#### **5. Term, Commencement of Service and Return to Full Service**

**5.1** Retail access service shall have a minimum term of one year subject to the provisions of 5.4. Upon completion of the initial term, retail access service shall continue on a month to month basis until terminated by the Customer or Detroit Edison with 30 days written notice.

When more than 10% of the customer load in kWh for any of the three rate classes—residential, commercial, and industrial—is taking open access service, customers in that class must provide 60 days written notice.

If a retailer defaults, a Customer who returns to full service before 30 days elapse shall pay the higher of the tariff rate or market based rate until Detroit Edison has received the benefit of 30 or 60 days notice, at which time the customer may elect to remain on full service for 12 months and pay tariff rates as provided for in 5.4. All other customers who fail to give less than 30 or 60 days notice are subject to Detroit Edison's ability to supply their requirements.

The terms of service associated with any previously contracted or newly initiated service are specified below:

**5.1.1** Retail Access Service provided to new locations served by Detroit Edison shall be for an initial minimum term of five years over which time the minimum

charges shall apply. Contributions in Aid of Construction for distribution facilities will be per tariff rate.

**5.1.2** Retail Access Service provided to existing locations shall be for the unexpired portion of any existing contract but not less than a term of one year over which time the minimum charges shall apply. Minimum charges shall be adjusted each year to recognize actual demand.

**5.1.3** After the expiration of the contract minimum term for Retail Access Service, the contract shall be extended thereafter, from month-to-month. . Minimum charges shall be adjusted each year to recognize actual demand.

**5.2** Retail access service shall be initiated by a Customer choosing an Alternative Electric Supplier and the subsequent submission of an electronic enrollment by the Alternative Electric Supplier on behalf of the Customer in a manner specified by Detroit Edison. Alternative Electric Supplier submission of the enrollment warrants that a valid contract with the prospective Customer exists. In accordance with Section 2.5, Detroit Edison shall be required to complete, within 45 days, all open access enrollment activities.

**5.3** Retail access service may not commence until metering has been installed as specified in this Tariff or agreements related thereto and: :

ITC has received from the Marketer:

- (i) an executed Transmission Service Agreement,
- (ii) agreements between the Marketer and ITC as specified in Section 20 of this Tariff,

In addition, Detroit Edison must have received from the Alternative Electric Supplier:

- (i) the Alternative Electric Supplier's warranty, that the Alternative Electric Supplier has obtained all necessary approvals authorizing the Alternative Electric Supplier to conduct business at each Location to be served, and
- (ii) the Alternative Electric Supplier's warranty, that each enrollment submitted is in full compliance with requirements for enrollment, and is backed by proper authorization from the Customer allowing the Alternative Electric Supplier to enroll the Customer in retail access.

#### **5.4 Return to Full Service**

Customers which discontinue retail access service may return to Detroit Edison Full Service under the following conditions:

**5.4.1 Option 1 -- 12 Month Service Commitment**

If the Customer commits to Detroit Edison Full Service for a minimum of 12 months, then the Customer may take service under any tariff rate for which the Customer qualifies. Any returning Customer that commits to remain on full service for the subsequent 12 months and then fails to do so will be back billed for the higher of the tariff rate or market-based rate.

**5.4.2 Option 2 -- Short-Term Service**

If the Customer chooses not to commit to Detroit Edison Full Service for a minimum of 12 months, then the Customer may take service under any tariff rate for which the Customer qualifies, with the tariff rate modified as follows:

The Power Service Cost Recovery component, both base and adjustment factor, in any and all energy prices of the tariff, shall be subtracted from the energy prices and the Market Priced Power charge shall be added to the energy prices. The Market Priced Power charge shall reflect the current market value of energy, shall be based on visible indexes of electricity market prices plus reasonable charges for transmission and losses, and shall be calculated according to methods approved by the Michigan Public Service Commission. The Customer shall be billed the higher of the applicable tariff energy prices or the Market Priced Power charge.

The Customer may at any time return to retail access service or agree to take Detroit Edison Full Service for a minimum of 12 months.

**5.4.3** Unless otherwise provided for and subject to other conditions in this tariff, a Customer may return to Detroit Edison Full Service under the provisions of Section 5.4 and subsequently go back to retail access service no more than once in any month.

**6. Billing and Payment**

**6.1** Detroit Edison will bill the Customer for retail access service at the rates and charges outlined in Section 8.

**6.2** The Customer shall pay Detroit Edison the amount billed on or before a due date established by Billing Rules approved by the Commission in cases U-10661 and U-11397. A late payment charge of 2%, not compounded, of the unpaid balance, net of taxes, shall be added to any bill which is delinquent and not in dispute.

**6.3**

The Customer shall retain the right to direct Detroit Edison to send the monthly bill to any third party, including the Alternative Electric Supplier.

**6.4 Disconnection for Non-Payment**

Customers will be subject to disconnection for non-payment of Detroit Edison distribution charges, that are not in dispute, in accordance with the rules described in Detroit Edison's Rules and Regulations, Section 2.5..

**7. Distribution Contract Capacity**

**7.1** All Interval Demand Metered Customers shall contract for an amount of capacity sufficient to meet the maximum requirements of all Load connected to the Detroit Edison Distribution System at the Customer's Location. The Distribution Contract Capacity will initially be set at the greater of: 1) the previously established Contract Capacity; 2) the previously established Distribution Contract Capacity; 3) the highest 30-minute integrated demand created during the previous 12 billing months at each voltage level (whether the Customer received service under this tariff or a Detroit Edison retail tariff or contract), for each Location. Any single 30-minute integrated reading of the Interval Demand Meter in any month that exceeds the Distribution Contract Capacity then in effect shall become the new Distribution Contract Capacity. Customers not having previously established service requirements shall contract with Detroit Edison for a specified Distribution Contract Capacity in kW sufficient to meet the maximum requirements for each location.

**7.2** Detroit Edison will provide the necessary facilities to deliver electric power from its Distribution System at the Distribution Contract Capacity. Any incremental cost incurred by Detroit Edison to provide the necessary facilities to meet the Customer's increased demand for distribution services over the Distribution Contract Capacity existing when service commences under this tariff shall be the responsibility of the Customer. Once established, the Distribution Contract Capacity shall not decrease during the contract term unless there is a specific permanent reduction in connected load.

**8. Rates and Charges****Description of Charges****8.1 Service Charge**

The Service Charge shall apply to each Location served under this tariff as shown in Sections 8.6 and 8.7.

**8.2 System Use Charge**

The System Use Charge is determined as follows:

### **8.2.1 Customers with Interval Demand Meters**

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

### **8.2.2 Customers with Energy Meters**

The System Use Charge shall be the product of the applicable rate as shown in section 8.7 and the Customer's energy consumption.

### 8.3 Substation Charge

A substation charge shall apply to Customers with service at a service voltage level of 24kV or above who are provided service through a substation owned by Detroit Edison and dedicated to the Customer's use. The Substation Charge shall be the product of the applicable rate as shown in section 8.6 and the Distribution Contract Capacity.

### 8.4 Transition Charge

The Transition Charge recovers the costs associated with implementing the restructuring of the electric power supply industry. Through 12/31/2001 this charge will equal the bid amount associated with the capacity rights used to enroll the Customer. On 1/1/2002 and thereafter, the transition charge shall be 0.00¢ per kWh. As ordered in Case No. U-12639, a 10 (d)(5) adjustment to the transition charge of -.47¢ per kWh shall apply.

## Application of Charges

### 8.5 Minimum Charge

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

### 8.6 High Voltage Distribution Service

Customers receiving electric service at 4,800 volts or higher and stepping it down to working voltages with their own transformation equipment or through a substation owned by Detroit Edison and dedicated to the Customer's use shall have the following charges for retail access service:

Charge	Customer Owned Transformer	24 or 41.6 kV	120 kV and Above
Service Charge	\$450/month	\$450/month	\$450/month
System Use Charge	\$2.47/kW/month	\$0.57/kW/month	\$0.24/kW/month
Substation Charge	N/A	\$0.36/kW/month	\$1.18/kW/month
Surcharges and Credits	Schedule B4.9	Schedule B4.9	Schedule B4.9
Any additional Transition, True-Up Charges, Surcharges and Credits as may be approved by the Commission			

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

**8.7 Low Voltage Distribution Service**

Customers receiving electric service at 480 volts or less, using Detroit Edison-owned transformation shall be charged for retail access service as follows:

Charge	480 Volts and Below	
		Optional Energy Metered
Meter Type	Interval Demand Meter	Energy Meter
Service Charge	\$5.95/month	\$5.95/month
System Use Charge	\$3.42/kW/month	2.88¢/kWh
Surcharges and Credits	Schedule B4.9	Schedule B4.9
Any additional Transition, True-Up Charges, Surcharges and Credits as may be approved by the Commission		

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

**8.8 Power Factor and Excess Reactive Demand For Customers With Interval Demand Metering**

A power factor of less than 70% is not permitted and necessary corrective equipment must be installed by the Customer to correct to a minimum level of 70%. Power factor and excess Reactive Demand charges will be calculated at each Customer location at the time of the Location’s single highest 30-minute integrated kW reading of the Interval Demand Meter during the on-peak hours of the billing period, which are those hours from 7 a.m. until 11 p.m. consistent with the ITC Open Access Transmission Tariff. Excess Reactive Demand is any Reactive Demand resulting from operations below 80% power factor. A monthly charge of \$3.50/kVAR will be applied to excess Reactive Demand.

**10. Other Provisions**

**10.1** Retail Access Customers will be subject to the relevant curtailment procedure contained in Detroit Edison's electrical Procedures, Rule B-3.7. Detroit Edison shall give Retail Access Customers the same priorities in curtailment situations as it gives Full Service Customers.

**10.2** All Points of Receipt for Power produced within the Detroit Edison retail service territory for delivery to Customers within that territory shall be considered as being points located on the ITC Transmission System.

**10.3** All electric generation equipment connected in parallel with the Detroit Edison system must comply with the Detroit Edison Protective Relaying, Operating and Telemetering Guidelines for Independently Owned Generation and before operating such equipment must obtain certification, in writing, from Detroit Edison that the conditions outlined in the guidelines have been met.

**10.4** Customer equipment must be operated so that voltage flicker and harmonics on the Detroit Edison Distribution System shall not exceed permissible limits established by Detroit Edison and by IEEE Standard 519, respectively. Failure to comply with this requirement may result in discontinuance of service to the Customer and disconnection of Customer's Load from the Detroit Edison system.

**10.5** Redundant services requested by the Customer may be provided under separate agreement.

**10.6** Detroit Edison's Rules and Regulations as currently in effect are incorporated by reference into this tariff to the extent applicable and, Rule C-2.2(2) notwithstanding, only to the extent not inconsistent with the terms of this Tariff.

## **ALTERNATIVE ELECTRIC SUPPLIER SECTION**

### **11. Alternative Electric Supplier**

**11.1** This Tariff section outlines the rights and responsibilities of Alternative Electric suppliers and Detroit Edison when enrolling and serving Customers under retail access service. The Alternative Electric Supplier is the retail seller of electric supply to the Customer on Detroit Edison's Distribution System.

**11.2** If an Alternative Electric Supplier or Marketer fails to pay amounts due Detroit Edison or otherwise fails to perform obligations undertaken in connection with service to a Customer, Detroit Edison will give the Customer notice of the Alternative Electric Supplier's or Marketer's default. If the Customer, its Alternative Electric Supplier, or its Marketer fails to pay amounts due Detroit Edison or otherwise fails to comply with the provisions of the applicable Tariffs or agreements with Detroit Edison, retail access service may be terminated. Unless the Customer, Alternative Electric Supplier or Marketer cures the default with Detroit Edison or the Customer changes its Alternative Electric Supplier, the Customer may be returned to Detroit Edison Full Service subject to the provisions of Section 5.4.

**11.3.** The Alternative Electric Supplier is responsible for all of the Alternative Electric Supplier charges associated with its Customers until retail access service is terminated.

**11.4** Termination of retail access service to a Customer can be initiated by the Alternative Electric Supplier, the Customer or Detroit Edison. Alternative Electric Suppliers and Detroit Edison shall comply with the billing rules that govern the shut off of service, R 460.2101 et seq. and R 460.3903 et seq. except that instead of providing a notice of termination, Alternative Electric Suppliers shall provide a notice of return to full service.

### **12. Creditworthiness**

**12.1** There is no creditworthiness requirement for AES's unless the AES is purchasing products or services from Detroit Edison. Alternative Electric Suppliers who purchase products or services from Detroit Edison must demonstrate and maintain current creditworthiness in an amount sufficient to cover anticipated charges for all those products or services. For unsecured credit, the Alternative Electric Supplier must provide three (3) years of audited financial statements, including notes, having an acceptable amount of positive tangible net worth, and meeting risk parameters derived from an analysis of its financial statements. The Alternative Electric Supplier may provide alternative security or credit enhancement, such as a letter of guarantee, letter of credit or prepayment. Detroit Edison will use reasonable credit review procedures which may include, but are not limited to, review of the Alternative Electric Supplier's

financial statements, verification that the Alternative Electric Supplier is not operating under state or federal bankruptcy laws, and has no pending lawsuits or regulatory proceedings or judgments outstanding which would have a material adverse affect on the Alternative Electric Supplier and its ability to perform its obligations. Affiliates of Detroit Edison must meet these same creditworthiness requirements.

**12.2** The amount of creditworthiness required is equivalent to two months expected exposure.

**12.3** Following 24 months of full and timely payment to Detroit Edison for service provided, an AES shall be deemed to have sufficient credit to satisfy Detroit Edison's requirements.

### **13. Electronic Business Transactions**

**13.1** Unless specified otherwise by Detroit Edison in a Commission-approved tariff, Alternative Electric Suppliers shall transact all business with Detroit Edison electronically.

**13.2** Unless otherwise specified by Detroit Edison in a Commission-approved tariff, all payments made to Detroit Edison by the Alternative Electric Supplier will be made by electronic funds transfer to the Detroit Edison account.

### **14. Conditions Precedent to Customer Enrollment**

The Alternative Electric Supplier will not be eligible to enroll Customers unless and until the following conditions precedent have been satisfied and continue to be satisfied:

**14.1** The Alternative Electric Supplier has been granted a license by the Commission.

**14.2** The Alternative Electric Supplier has demonstrated electronic communication and commerce capability, which meets Detroit Edison's standards and protocols as defined in tariffs approved by the Commission.

**14.3** Until 1/1/2002 the Alternative Electric Supplier is authorized to use capacity, as evidenced by a valid, executed Capacity Owner-Alternative Electric Supplier Notice between the Alternative Electric Supplier and the Capacity Owner in an amount sufficient to serve the Customers that it seeks to enroll.

**14.4** The Alternative Electric Supplier has an executed contract with a qualified Marketer, as evidenced in an executed Alternative Electric Supplier-Marketer Notice.

### **15. Conditions Precedent for Serving Customers**

The Alternative Electric Supplier will not be permitted to serve or continue to serve Customers unless and until the following conditions precedent have been satisfied and maintained

**15.1** The Alternative Electric Supplier has satisfied and continues to satisfy all conditions in Section 14.

**15.2** All required Customer metering equipment is in place and functioning properly

**15.3** The Alternative Electric Supplier has complied with and continues to comply with all provisions of this Tariff.

**16. Rates and Charges**

**16.1** The Alternative Electric Supplier shall pay Detroit Edison the following:

**16.1.1** An Alternative Electric Supplier enrolling Customer(s) with the Complete Billing option shall pay Detroit Edison a one-time charge of \$5,000 for the Alternative Electric Supplier's initial rate-ready schedule set-up for up to sixty rates, regardless of the number of Customers electing this option.

**16.1.2** An Alternative Electric Supplier enrolling Customer(s) with the Complete Billing option shall pay Detroit Edison a monthly transaction charge of \$0.20 per Customer location billed under the Complete Billing option.

**16.1.3** An Alternative Electric Supplier enrolling Customer(s) with the Complete Billing option shall pay Detroit Edison \$1,000 per occurrence for each change request made by the Alternative Electric Supplier to its rate-ready schedule, regardless of the number of changes in the request or the number of Customers effected.

**16.1.4** Any other charges to the Alternative Electric Supplier for services provided by Detroit Edison will be negotiated on an individual case basis.

**16.2** Detroit Edison will provide two (2) Customer Billing options-Complete Billing by Detroit Edison and Separate Billing by Detroit Edison and the Alternative Electric Supplier. It is the responsibility of the Alternative Electric Supplier to identify on the Customer Enrollment Form which of these options the Customer has requested.

**16.3 Allocation of Partial Payments Under Complete Billing**

In the event the Customer submits a partial payment, the receipts will be applied as follows:

- all past due and current Detroit Edison distribution and distribution related charges
- past due and current Alternative Electric Supplier energy charges
- other Detroit Edison charges
- other Alternative Electric Supplier charges

Partial payments resulting from disputed charges shall be allocated first to undisputed charges in each of the above four categories and then to disputed charges in each of the above four categories.

**16.4** Detroit Edison will not pursue collection actions for any Alternative Electric Supplier.

**17. Dispute Resolution**

**17.1** Detroit Edison will have no duty or obligation to resolve any complaints or disputes between or among Capacity Owners, Alternative Electric Suppliers and Marketers or any combination thereof, related to but not limited to switching Alternative Electric Suppliers, switching Marketers, termination of retail access service, Customer enrollment or Customer billing options.

**17.2** In the event of a dispute between Detroit Edison and an Alternative Electric Supplier, including but not limited to “Events of Default,” the Parties may attempt, in good faith, to resolve the dispute amicably and promptly. If the dispute is not resolved in five (5) business days, the Parties may attempt to resolve the dispute by promptly appointing a senior representative of each Party to attempt to mutually agree upon a resolution. The two senior members shall meet within ten (10) business days. If the two senior representatives cannot reach a resolution within a 30-day period, the dispute may, on demand of either Party, be submitted to arbitration as provided in this section.

**17.3** The dispute will be submitted for resolution in accordance with the American Arbitration Association (“AAA”) Commercial Arbitration Rules. The judgment rendered by the arbitrator may be enforced in any court having jurisdiction of the subject matter and the Parties.

**17.4** If the parties are unable to agree on an arbitrator, the arbitrator shall be determined by AAA.

**17.5** The findings and award of the arbitrator shall be final and conclusive and shall be binding upon the Parties, except as otherwise provided by law. Any award shall specify the manner and extent of the division of the costs between the Parties.

**17.6** Nothing in this Section shall restrict the rights of either Party to file a formal complaint with an appropriate regulatory agency regarding any issue the adjudication of which lies within the exclusive jurisdiction of the regulatory agency.

**18. Slamming Protection**

**18.1** Alternative Electric Suppliers shall warrant that the Customer has duly authorized the submitted enrollment and the Alternative Electric Supplier has complied with the provisions of 2000 P.A. 141 or any applicable commission rules developed pursuant to 2000 P.A. 141 to prevent slamming.

**18.2** Detroit Edison provides Residential Customers with pending enrollments with an Alternative Electric Supplier a three-day notice period in which the Customer may cancel the enrollment before the switch is executed. If the Customer challenges the enrollment the switch transaction is cancelled, the effected Alternative Electric Supplier(s) are notified, and the enrolling Alternative Electric Supplier shall be assessed the \$5 switching fee instead of the Customer. If the Customer cancels an enrollment in

error, the enrolling Alternative Electric Supplier's remedy is to discuss the situation with the Customer and submit a new enrollment.

Commercial and Industrial ROA Customers' right to cancel an enrollment shall be in accordance with the terms of their contract with their Alternative Electric Supplier(s).

### 19. Real Power Losses

The Marketer used by the Alternative Electric Supplier is responsible for replacing losses associated with the delivery of power to the Customer's meter. The amount of Power delivered by Detroit Edison on the Detroit Edison Distribution System to the Customer's meter shall be adjusted using the following real power loss factors for distribution service:

	<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
Secondary	10.88%	11.95%	12.01%	10.23%
4.8/13.2 kV	6.61%	7.13%	7.37%	6.31%
24kV/41.6 kV	1.86%	2.09%	2.34%	1.90%
120 kV and above	0.55%	0.57%	0.57%	0.55%

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

## MARKETER SECTION

### 20. Marketers

**20.1** This Tariff section outlines the rights and responsibilities of Marketers and Detroit Edison when serving Customers under retail access service. The Marketer is an entity that takes title to power and has FERC authorization to market energy services. FERC authorization allows the Marketer to use transmission systems to move power from the generator(s) to the distribution system.

**20.2** Marketers desiring to supply Power to Customers through Alternative Electric Suppliers, under the terms of this Retail Access Service Tariff, must comply with all statutory and regulatory requirements, state and federal law and must enter into agreements satisfactory to ITC and Detroit Edison for:

- (i) the payment of Transmission Charges and other charges
- (ii) the provision and exchange of Customer information associated with service under this tariff,
- (iii) the supply, scheduling and receipt of Power to be received by Detroit Edison from the Marketer for delivery to the Customer,
- (iv) the supply and scheduling of, and payment for, any backup service to be provided by Detroit Edison, and
- (v) transmission service under the ITC Open Access Transmission Service Tariff or JOATT in an amount sufficient to supply Power, including losses, to all Customers the Marketer intends to serve.

### 21. **Real Power Losses**

A Marketer is responsible for replacing losses associated with the delivery of power to the Customer's meter

Marketers must schedule and supply an amount of Power equal to its Customer's hourly usage x  $[(1 + D\%) \times (1 + T\%)]$  to account for losses on the Detroit Edison ITC Transmission and Detroit Edison Distribution Systems, where T% is the applicable loss factor contained in the ITC Open Access Transmission Tariff and D% is the applicable loss factor from the table in Section 18.

### 22. Reciprocity

**22.1** If a municipally owned utility elects to provide electric generation service to retail Customers receiving delivery service from an electric utility, they must comply with the provision outlined in section 10y of 2000 P.A. 141.

**22.2** Detroit Edison will not accept Power from a Marketer that does not contractually agree to provide Detroit Edison with reciprocal access to retail Customers. A reasonable level of reciprocity between Detroit Edison and the prospective Marketer and its affiliates must be established.

Through December 31, 2001:

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

On and after January 1, 2002:

No Michigan-based electric utility shall be permitted to utilize Detroit Edison's Distribution System to make retail sales unless the utility wishing to make the sale provides comparable retail access service to Customers located within its service territory.

No generation supplier that provides retail distribution services, or that has an affiliate that provides retail distribution services, shall be permitted to utilize the Detroit Edison Distribution System to make retail sales unless the Marketer or its affiliate provides comparable retail access service. If the transaction involves an intermediary (such as a Marketer or broker), the reciprocity obligation may be satisfied by either the regional transmission/distribution affiliate of the intermediary or by the owner of the generation source or its regional transmission/distribution affiliate.

"Comparable" retail access service is one which; (i) provides for retail access service in an amount of Customer load equivalent to that provided by Detroit Edison, and; (ii) specifies rates, terms, and conditions that are equivalent to those offered by Detroit Edison, and that have been approved by all applicable regulatory authorities for use in retail access service transactions.

**23. Marketer Participation in the Program** The Marketer shall supply the following documentation to ITC prior to providing retail access service:

**23.1** An Application for Transmission Service.

**23.2** All applicable Transmission Service Agreement(s)

**23.3** A Wholesale Power Supply Agreement for emergency energy supply service to provide power: 1) in the event the Marketer's power supply fails to be delivered until backup service (either Optional Retail Access Backup Service or wholesale backup service) is scheduled, or 2) in the event backup service is not contracted for or is not delivered.

**23.4** The Marketer must demonstrate current creditworthiness in an amount sufficient to cover anticipated transmission charges and charges for other services provided by Detroit EdisonITC. For unsecured credit, the Marketer must provide three (3) years of audited financial statements, including notes, having an acceptable amount of positive tangible net worth, and meeting risk parameters derived from an analysis of its financial statements. The Marketer may provide alternative security or credit enhancement, such as a letter of guarantee, letter of credit or prepayment. Detroit EdisonITC will use reasonable credit review procedures which may include, but are not limited to, review of the Marketer's financial statements, verification that the Marketer is not operating under state or federal bankruptcy laws, and has no pending lawsuits or regulatory proceedings or judgments outstanding which would have a material adverse affect on the Marketer and its ability to perform its obligations. Affiliates of Detroit Edison must meet these same creditworthiness requirements.

**23.4.1** The amount of credit required for transmission services and ancillary services is the total of three times the monthly charges, for the peak month, as observed in the last 12 months.

**23.4.2** The amount of credit required for backup service for energy used during June, July and August is based on Market Priced Power.

**23.4.3** The amount of credit required for backup service for energy used from September to May is based on Market Priced Power.

**23.4.4** Evidence of credit must be received by ITC 30 days prior to Customers taking retail access service.

**23.5** A signed Marketer Agreement.

**23.6** An Alternative Electric Supplier-Marketer Notice evidencing the Marketer's agreement to provide Transmission Services, Ancillary services, and backup services to Customers for at least one Alternative Electric Supplier. If a Marketer is also serving as a qualified Alternative Electric Supplier, an Alternative Electric Supplier-Marketer Notice must still be forwarded to Detroit Edison showing the same entity as both the Alternative Electric Supplier and Marketer. If a Customer is serving as its own Marketer and Alternative Electric Supplier, an Alternative Electric Supplier-Marketer Notice must be forwarded to Detroit Edison showing the same entity (the Customer) as both the Marketer and Alternative Electric Supplier.

**23.7** Certify that it meets all reciprocity requirements of Section 6 of the OATT and Section 23 of this tariff.

**23.8** Where applicable, a Tax Exemption Certificate exempting the Marketer from sales tax for Transmission Services sold.

**24.** In addition to the documentation listed above, the Marketer prior to being allowed to serve Customers must:

**24.1** Demonstrate that it is in full compliance with all FERC and OATT requirements; and

**24.2** Demonstrate electronic communications and commerce capability which meets Detroit Edison's standards and protocols as defined on the Detroit Edison web site and in tariffs approved by the Commission..

**24.3** Complete a Transmission Service Agreement Sink - Meter Relationship form which identifies the Transmission Service Agreement Sink identification code provided by ITC associated with each of its Alternative Electric Supplier's Customer meter number(s).

## **25. Marketer's Obligations as a Participant in Program**

The Marketer agrees to serve all Customers enrolled by an Alternative Electric Supplier for which there is an active Alternative Electric Supplier-Marketer Notice on file with Detroit Edison. A Marketer acting as an Alternative Electric Supplier must fulfill all requirements of both a Marketer and an Alternative Electric Supplier.

**25.1** The Marketer will arrange for all Transmission Services and Ancillary Services associated with service to a Customer.

**25.2** The Marketer will comply with all applicable provisions of the OATT, the JOATT, this Tariff, any applicable federal, state or local law, ordinance, or regulation, and any applicable administrative or judicial order.

**25.3** The Marketer will use the Transmission Service Agreement Sink identification code provided by ITC when reserving transmission and scheduling energy.

**25.4** The Marketer will provide daily energy schedules for all services including losses associated with transmission and distribution, as required by the OATT or the Optional Retail Access Backup Tariff. The Marketer will pay applicable taxes.

**25.5** The Marketer will pay ITC for all applicable transmission services, ancillary services and backup services provided by ITC to the Marketer for the Marketer's

Customer(s) from the service commencement date to the service termination date. The Marketer shall pay Detroit Edison for any optional Emergency Energy Services and backup services purchased from the Detroit Edison merchant.

**25.6** The Marketer will comply with all applicable requirements of NERC, ECAR or a successor organization associated with its deliveries to the ITC transmission system and will assume responsibility for any and all tagging requirements as well as providing all Sink information needed for completing the transmission service setup process.

**25.7** The Marketer will notify ITC immediately of any material adverse change in Marketer's financial condition.

**25.8** In the event of an interruption of its source the Marketer shall pay Detroit Edison for all power delivered in the place of the lost supply. Unless contracted for separately with Detroit Edison, the pricing for this service shall be the same as that specified in the Optional Retail Access Backup Service Tariff. A minimum charge for one hour will apply to this service, and subsequent usage will be rounded up to the next full hour.

**25.9** A Marketer may obtain wholesale backup service from Detroit Edison, whereby Detroit Edison commits to supply scheduled power at wholesale to the Marketer sufficient to cover deficiencies in Marketer's supply of power to the Detroit Edison Distribution System. The Marketer is required to schedule this service. The Marketer will be billed for and shall pay for wholesale backup service.

**25.10** Pursuant to ITC's Optional Retail Access Backup Service Tariff on file with the Michigan Public Service Commission an Alternative Electric Supplier for a Customer may contract for Optional Retail Access Backup Service. The Marketer, however, shall schedule this service. The Marketer will be billed for and shall pay for Power delivered.

**25.11** A Marketer serving Customers under multiple Transmission Service Agreements must provide separate reservations and schedules for each.

**25.12** A Marketer serving multiple Customers may not combine the reservations or schedules for Customers served under this Tariff with reservations and schedules for Customers served under other tariffs.

**25.13** A Marketer serving both Interval Demand and Energy Metered accounts under a single Transmission Service Agreement may combine the loads from these accounts into a single integrated schedule.

**25.14** A Marketer understands and agrees to be bound by all charges associated with demands determined using ITC profiling for Energy Metered accounts.

## **26. Detroit Edison/ITC Obligations to the Marketer**

**26.1** ITC shall provide Transmission Services pursuant to the OATT, the Marketer's Transmission Service Agreement(s), applicable FERC orders or rulings, the Marketers Agreement, and any and all applicable operating procedures used by Michigan Electric Power Coordination Center (MEPCC) and Detroit Edison ITC in its daily management of its Transmission System.

**26.2** ITC shall provide or arrange to provide all mandatory ancillary services, pursuant to the OATT.

**26.3** ITC shall provide or arrange to provide all optional ancillary services, unless the Marketer demonstrates that it has acquired the optional ancillary services from another source, pursuant to the OATT.

**26.4** Detroit Edison shall offer emergency energy service pursuant to the Wholesale Power Supply Agreement.

**26.5** If contracted for, Detroit Edison shall provide Optional Retail Access Backup Service pursuant to the Optional Retail Access Backup Service Tariff on file with the Commission.

## **27. Marketer Billing and Payment**

**27.1** Detroit Edison and ITC shall each bill the Marketer for services rendered in accordance with the terms and conditions outlined in this Tariff, the OATT, the Wholesale Power Supply Agreement, and the Optional Retail Access Backup Service Tariff.

**27.2** ITC may send the Marketer a bill for transmission services and Ancillary Services, and a. Detroit Edison will send a separate bill for any applicable emergency energy services and backup services provided. ITC and Detroit Edison will render ~~both~~ these bills within approximately the first ten (10) business days of each calendar month for service rendered in the previous calendar month. If any load profiled Customers are included in these billings, the imbalance billing will be delayed two months to allow for obtaining meter reads of usage for Customers in all billing cycles and applying the appropriate load curves.

**27.3** Payment in full is due from the Marketer to ITC and Detroit Edison twenty (20) days from the date the bill is issued ("due date").

## **28. Events of Default**

**28.1** The Marketer will be in default if the Marketer:

**28.1.1** Fails to maintain its creditworthiness and fails within ten (10) business days of written or electronic notification from ITC to reestablish creditworthiness; or

**28.1.2** Fails to maintain qualification as a Marketer pursuant to sections 24 and 25 of this Tariff or to perform its obligations pursuant to Section 26 of this Tariff and fails within ten (10) business days of written or electronic notification from ITC to reestablish qualification and resume performance of its obligations; or

**28.1.3** Fails to pay for services rendered by ITC or Detroit Edison and fails to remedy the default according to the OATT or this Tariff, if applicable; or, if not applicable, fails to remedy the default within thirty (30) calendar days of written or electronic notification from ITC or Detroit Edison, as appropriate, to make all payments in full to ITC and Detroit Edison; or

**28.1.4** Fails to submit schedules prior to commencement of service as stipulated by the OATT. Scheduling functions shall be in accordance with NERC Policy 3. Failure to perform scheduling functions will contribute to noncompliance (as measured by four levels of noncompliance) of NERC Control Performance Standard 1 and 2 requirements; or

**28.1.5** Is found to have substantively misrepresented a material fact or other representation in any document submitted to ITC or Detroit Edison in connection with this Program and fails within ten (10) business days of written or electronic notification from ITC or Detroit Edison to correct the misrepresentation while remaining qualified.

## **29. Enrollment and Service Commencement and Termination**

**29.1** The Marketer is responsible for all obligations and liabilities with respect to transmission services provided to its Customers until the Customers' participation in retail access service is terminated by either the Alternative Electric Supplier, Detroit Edison, or the Customer, or until the Marketer's participation in retail access is terminated by either the Marketer, ITC or Detroit Edison, or until the Marketer's relationship with an Alternative Electric Supplier is terminated by the Marketer or the Alternative Electric Supplier.

**29.2** All Customer enrollment commencement and Customer enrollment termination must be performed by a qualified Alternative Electric Supplier. ITC and Detroit Edison shall have no obligations to the Marketer pursuant to this Tariff until an Alternative Electric Supplier enrolls a Customer whose services are to be provided by the Marketer.

## **30. Representations and Warranties**

**30.1** The Marketer represents and warrants to Detroit Edison/ITC that:

**30.2** At all times when providing service to a Customer in conjunction with this Tariff, the Marketer will comply with all provisions of the OATT, the JOATT, this Tariff, and any other applicable federal, state, or local law, ordinance, or regulation, and any applicable administrative or judicial order.

**30.3** The Marketer will not knowingly schedule generation significantly different from the expected Customer loads served.

**30.4** Except as provided in section 29 of this Tariff, defaulting Party's liability shall be limited to direct actual damages only, and such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, including but not limited to, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision, or otherwise. Limitations imposed on remedies and the measure of damages will be without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive.

### **31. Dispute Resolution**

**31.1** ITC and Detroit Edison will have no duty or obligation to resolve any complaints or disputes between Alternative Electric Suppliers and Marketers, related to but not limited to Alternative Electric Supplier or Marketer notices, or switches or enrollment terminations.

**31.2** In the event of a dispute between ITC and the Marketer of a subject matter controlled by the terms of the OATT, ITC and the Marketer shall resolve the dispute in accordance with the provisions of the OATT.

**31.3** In the event of a dispute between ITC or Detroit Edison and the Marketer, including but not limited to "Events of Default," ITC or Detroit Edison, as applicable, and the Marketer may attempt, in good faith, to resolve the dispute amicably and promptly. If the dispute is not resolved in five (5) business days, ITC or Detroit Edison, as applicable, and the Marketer shall attempt to resolve the dispute by promptly appointing a senior representative of ITC or Detroit Edison, as applicable, and the Marketer to attempt to mutually agree upon a resolution. The two senior members shall meet within ten (10) business days. If the two senior representatives cannot reach a resolution within a 30-day period, the dispute may, on demand of ITC or Detroit Edison, as applicable, or the Marketer, be submitted to arbitration as provided herein.

**31.4** The dispute will be submitted for resolution in accordance with the American Arbitration Association ("AAA") Commercial Arbitration Rules. The judgment rendered by the arbitrator may be enforced in any court having jurisdiction of the subject matter and ITC or Detroit Edison, as applicable, and the Marketer.

**31.5** If the parties are unable to agree on an arbitrator, the The arbitrator shall be determined by AAA.

**31.6** The findings and award of the arbitrator shall be final and conclusive and shall be binding upon ITC or Detroit Edison, as applicable and the Marketer, except as otherwise provided by law. Any award shall specify the manner and extent of the division of the costs between ITC or Detroit Edison, as applicable, and the Marketer.

**31.7** Nothing in this Section shall restrict the rights of either ITC or Detroit Edison, as applicable, or the Marketer to file a formal complaint with an appropriate regulatory agency regarding any issue the adjudication of which lies within the exclusive jurisdiction of the regulatory agency.

### **32. Bidding For Capacity Prior To 1/1/2002**

Bid deposits for successful bids which remain unused through December 31, 2001 shall be returned to the bidder by February 1, 2002. No interest shall be paid on these returned deposits if returned by this date. If the bid deposit is returned after February 1, 2002, simple interest at the annual rate of 7% shall be paid from the date the Company received the deposit.

### **34. Optional Load Profile Management Service**

The actual hourly Power consumption of Customers without Time-of-Use meters is unknown. Thus, the Marketer is not providing total load following for those Customers being supplied Power by the Marketer; the Company is providing this service. As compensation to the Company for providing generation resources to meet unmetered supply versus consumption deviations, the Marketer electing this service shall be charged a Profile Management Service Charge as set forth below.

The Load Profile Management Service Charge is \$.0046 per kWh for all kWh consumed.

#### **Load Profiling**

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

(1) Time-of-Use meters shall be installed on a sample set of Customers to achieve a statistically accurate sample rate of 80% ± 20% on an hourly basis during the on-peak hours. Such sample set of Time-of-Use meters shall be furnished, installed, maintained and owned by the Company.

(2) The hourly meter data from the sample set meters, along with historical customer usage history, will be used by the Company to generate and maintain load leading profiles for each Marketer. Load leading profiles will be provided by the Company to the Marketer by 2:00 PM Eastern Time on the Wednesday before the start of the next week (or Tuesday if Thursday is a holiday). The Company may adjust each profile by providing notice at least one and one-half hours in advance of the effective time of the schedule change. The load leading profiles shall be used by the Marketers to schedule Power deliveries to the Point of Receipt. Scheduling for Power Delivery, using the load leading profile, shall be in accordance with Rule F5.I.

#### **Power Scheduling**

If the Marketer scheduled Power in accordance with the load leading profiles provided by the Company, then no hourly Energy Imbalance Charge shall occur. If the Marketer did not schedule Power in accordance with the load leading profiles, an hourly Energy

Imbalance Charge will apply. Any hourly energy imbalance shall be subject to the Energy Imbalance Service Schedule in the ITC's FERC Open Access Tariff.