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July 19, 2000

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, Michigan 48909

Re: The Detroit Edison Company, PSCR Plan, Case No. U-12121

Dear Ms. Wideman:

Please find enclosed for filing, the original and four (4) copies of Michigan Environmental Council and the Public Interest Research Group in Michigan's Motion for Rehearing and Reconsideration and Brief in Support of Motion for Rehearing and Reconsideration. In accordance with the Notice of Hearing, this document has been filed electronically on the Commission's website. A Proof of Service is also enclosed.

If you have any questions regarding this filing, please do not hesitate to contact me. Thank you.

Very truly yours,

KNAGGS, HARTER, BRAKE & SCHNEIDER, P.C.

Don L. Keskey

DLK/blr
Enclosure
cc: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of THE
DETROIT EDISON COMPANY for a Power
Supply Cost Recovery Plan Factor for the Year

Case No. U-12121

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

I, Laura J. Riley, being duly sworn, depose and say that on July 19, 2000, I served a copy of Michigan Environmental Council and the Public Interest Research Group in Michigan's Motion for Rehearing and Reconsideration and Brief in Support of Motion for Rehearing and Reconsideration upon:

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Jon P. Christinidis
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Detroit, Michigan 48226

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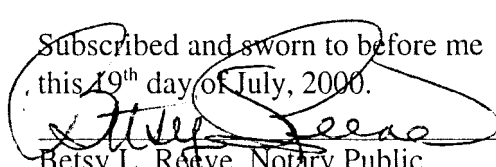
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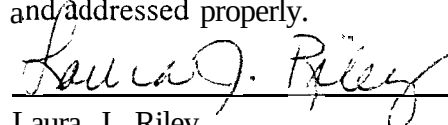
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Service was accomplished via electronic mail by placing same in a United States mail depository, enclosed in envelopes bearing postage fully prepaid and addressed properly.

Subscribed and sworn to before me
this 19th day of July, 2000.


Betsy L. Reeve, Notary Public

Eaton County, Michigan Acting in Ingham County, Michigan
My Commission Expires: November 24, 2003


Laura J. Riley

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of THE
DETROIT EDISON COMPANY for a Power
Supply Cost Recovery Plan Factor for the Year
2000.

Case No. U-12121

**MICHIGAN ENVIRONMENTAL COUNCIL AND THE
PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN'S
MOTION FOR REHEARING AND RECONSIDERATION**

The Michigan Environmental Council ("MEC") and the Public Interest Research Group in Michigan ("PIRGIM"), by and through their attorneys, Knaggs, Harter, Brake & Schneider, P.C., pursuant to MCL 460.35 *1 et seq.*, and the *Commission's Rules of Practice and Procedure*, Rule 403, R 460.17403, files this Motion for Rehearing and Reconsideration of the Michigan Public Service Commission's ("MPSC" or "Commission") June 19, 2000 Opinion and Order dismissing this case.¹ As more fully discussed in the accompanying brief in support of this Motion, MEC and PIRGIM request rehearing and consideration for the following reasons:

1. On June 19, 2000, the Commission issued a series of orders dismissing all PSCR cases for DECo and CECo under Act 304, including DECo case U-12121, and dismissing rate complaint cases involving CECo (U- 11560) and DECo (U-1 1495). The Commission's June 19, 2000 Order in U- 12 12 1 erroneously rules that Act 304 is to be suspended for The Detroit Edison Company ("DECo"), (and Consumers Energy Company ("CECo")), based upon a perceived inconsistency between Act 304 and 2000 PA 141, contrary to the Commission's duty to construe, harmonize and give effect to all statutes to the degree that they are not repugnant. The Commission's order also dismissed recent PSCR filings for CECo and DECo. The Commission's June 19, 2000 orders in U- 11560 and U-1 1495 dismiss the rate complaint cases on the same basis.

¹MEC and PIRGIM are filing identical Motions for Rehearing and Reconsideration in MPSC cases involving the rate complaints and in Act 304 matters because of the similarity of the issues and administrative efficiency.

2. The Commission's June 19, 2000 ruling is unlawful and contrary to binding judicial precedent governing the interpretation of statutes. No language in 2000 PA 141 indicates any legislative intent to repeal any other statute, to dismiss any ongoing cases, or to deprive the parties of their notice and hearing rights being exercised in accordance with the various Commission's statutes governing ratemaking, including Section 8, MCL 460.58, Sections 10(g) and 22, MCL 462.10(g) and MCL 462.22, Sections 6 and 6a, MCL 460.6 *et seq.*, 1982 PA 304, MCL 460.6j *et seq.*, Section 7, MCL 460.557, the Administrative Procedures Act ("APA"), MCL 24.201 *et seq.*, and the *Commission's Rules of Practice and Procedure*, R 460.17 101 *et seq.*, and also principles of constitutional due process under the state and federal constitutions. The legislature also indicated no intent to make 2000 PA 141 retroactive. Moreover, judicial precedent indicates that repeals by implication are disfavored, and that statutes should be construed in a consistent harmonious fashion if at all possible, unless there is a direct repugnancy. The Commission erroneously ruled that the provisions of 2000 PA 141 freeze the utility rates of DECo and CECo based upon the precise mathematical rates which were in effect on May 1, 2000, and provide for a 5 percent residential rate reduction, when in fact 2000 PA 141 does not expressly or by implication repeal any of the extensive provisions of Act 304, which provides specific statutory procedures for interim rate factor charges under PSCR clauses followed by reconciliations. The PSCR clauses for CECo and DECo, which operates in accordance with the specific provisions of Act 304 are, in effect, an overall tariff rate, which has not been altered or changed by any specific language in 2000 PA 141. Therefore, the operating provisions of the PSCR clause, including temporary or interim charges, followed by later reconciliations, remain in full effect, and are changeable in accordance with the PSCR clause tariff rate provisions adopted under the still valid Act 304.

3. The new statute, 2000 PA 141, also did not suspend or terminate any of the other ratemaking or regulatory statutes of the Commission for either DECo and CECo (referenced

supra), including provisions which provide for the filing and prosecution of rate complaints as filed by the Association of Businesses Advocating Tariff Equity (“ABATE”) and supported by other parties in DECo case U-I 1495 and CEC Co case U-I 1560.

4. The Commission’s order fails to recognize that the new statute, 2000 PA 141, and the Commission’s existing statutes, including Act 304, and the enabling and complaint statutes governing ratemaking, can readily be construed in a harmonious fashion to give full effect and meaning to all statutes. The scope of Act 304 proceedings also involve review functions which go far beyond merely the setting of rates or adopting specific PSCR rate adjustments, and include reviewing a utility’s contracts, plans, and forecasts, and determining the reasonableness and prudence of management decisions, relating to the acquisition and generation of energy supplies. The issues in this case, and in rate complaint case U-I 1560 (CECo) and U-I 1495 (DECo) are also relevant to the Commission’s remaining existing duties to determine reasonable rates, to implement 2000 PA 141 by determining appropriate **net** stranded and transition costs, and proper offsets or credits thereto, among related duties. The parties should be granted the opportunity to present additional remedies or relief in the rate complaint cases and Act 304 PSCR cases which the Commission could consider and undertake in a manner consistent with 2000 PA 141.

5. The Commission’s order dismissing this case fails to recognize that MEC and PIRGIM’s evidentiary case and requested relief under Act 304 in U-12121, and in the rate complaint cases U-I 1560 and U-I 1495, are wholly unaffected by Section 10 or any other provision of 2000 PA 141 because MEC and PIRGIM’s requested relief and remedies in said cases do not involve a proposed change in rates or rate levels.

6. The Commission erred procedurally in its June 19, 2000 order by dismissing this case without a motion or formal input by the parties, and in a manner which violates the parties’ statutory and constitutional rights under the Commission’s ratemaking and rate complaint statutes,

Act 304, the APA, the *Commission's Rules of Practice and Procedure*, and Constitutional Due Process.

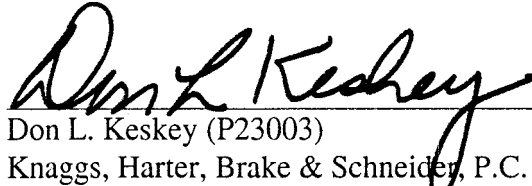
7. The portions of the Commission's June 19, 2000 orders dismissing cases U-12 12 1, CEC0's PSCR filings, and rate cases U- 11495 and U- 11560, are wholly unnecessary and unrelated to any part of the order implementing 2000 PA 141, including the immediate 5 percent rate reduction for CEC0 and DECo. This compounds the nature of the Commission's error in the orders.

WHEREFORE, MEC and PIRGIM respectfully request the Commission to rehear and reconsider its order of June 19, 2000 in this case, and upon rehearing and reconsideration, reverse its June 19, 2000 order to the degree that the orders dismiss this case. The Commission should proceed to order the completion of the proceedings in this case, and render a final decision in this case in accordance with statutory and constitutional law. MEC and PIRGIM request such further and consistent relief which is lawful and reasonable.

Respectfully submitted,

MICHIGAN ENVIRONMENTAL COUNCIL and
the PUBLIC INTEREST RESEARCH GROUP
IN MICHIGAN

By Their Attorneys,
Knaggs, Harter, Brake & Schneider, P.C.

A handwritten signature in black ink, appearing to read "Don L. Keskey", is written over a horizontal line.

Don L. Keskey (P23003)
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DATED: July 19, 2000

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of THE
DETROIT EDISON COMPANY for a Power
Supply Cost Recovery Plan Factor for the Year
2000.

Case No. U-12121

**MICHIGAN ENVIRONMENTAL COUNCIL AND THE PUBLIC
INTEREST RESEARCH GROUP IN MICHIGAN'S BRIEF IN
SUPPORT OF MOTION FOR REHEARING AND RECONSIDERATION**

The Michigan Environmental Council ("MEC") and the Public Interest Research Group in Michigan ("PIRGIM"), by and through their attorneys, Knaggs, Harter, Brake & Schneider, P.C., pursuant to MCL 460.351 *et seq.*, and MPSC Rule 403, R 460.17403, files this brief in support of its accompanying Motion for Rehearing and Reconsideration of the Michigan Public Service Commission's ("MPSC" or "Commission") June 19, 2000 Order dismissing this case.'

I. PROCEDURAL BACKGROUND AND FACTS

On September 30, 1999, The Detroit Edison Company ("DECo") filed its application with the MPSC commencing its power supply cost recovery ("PSCR") plan case for the year 2000. The case was docketed as MPSC Case U-12121.

On October 4, 1999, the Commission issued its Notice of Hearing to commence proceedings in the case pursuant to the Commission's enabling Acts, the Administrative Procedures Act ("APA"), MCL 24.201, 1982 PA 304, MCL 460.6j *et seq.* ("Act 304") and the Commission's *Rules of Practice and Procedure Before the Commission*, R 460.17101 *et seq.*, ("Commission Rules").

On October 28, 1999, MEC and PIRGIM timely filed their Petition to Intervene in these proceedings. MEC and PIRGIM's Petition presented issues concerning high level nuclear

'Except for the statement of facts and procedures, MEC and PIRGIM are filing virtually identical briefs in support of its Motion for Rehearing and Reconsideration in U-12121, U-1560, and U-1495, including DECo's PSCR plan case and the rate complaint cases, due to the similarity of issues involved (whether involving Act 304 or rate complaint cases) and administrative efficiency.

waste, the collection in Act 304 rates of fees for the Nuclear Waste Fund, and energy efficiency issues.

On November 4, 1999, a prehearing conference was held before the Administrative Law Judge (“ALJ”), in which MEC and PIRGIM’s Petition to Intervene was granted.

In the ensuing weeks, MEC and PIRGIM conducted formal discovery of DECo, and cross examined DECo’s witness concerning high level nuclear waste and the related fee issues.

On March 3, 2000, MEC and PIRGIM filed the testimony and exhibits of two witnesses: Mr. Ronald C. Callen, regarding the issues concerning high level nuclear waste and the collection in rates of the nuclear waste fee under Act 304, and Dr. Martin G. Kushler regarding energy efficiency issues. MEC and PIRGIM thereafter responded to formal discovery by DECo.

Following formal discovery by DECo, hearings continued in this case in April 2000. On April 17, 2000, the ALJ conducted a hearing concerning a motion by DECo to strike the testimony and exhibits of Mr. Callen and Dr. Kushler in their entirety. Following review of the motion and responses, and arguments at the hearing, the ALJ granted DECo’s motion to strike the testimony of Dr. Kushler, and denied the motion relative to Mr. Callen. The AM set June 19, 2000 as the date for receipt of Mr. Callen’s testimony, exhibits and cross examination thereon.

On May 1, 2000, MEC and PIRGIM filed with the MPSC an appeal of the ALJ’s ruling striking the prefiled testimony and exhibits of Dr. Kushler, which included a Motion for Immediate Consideration and an Emergency Application for Leave to Appeal and supporting Brief.

On June 14, 2000, the ALJ conducted a hearing regarding a newly filed DECo motion to adjourn the proceedings in this case, and to thereby defer the receipt of Mr. Callen’s testimony and exhibits. MEC and PIRGIM opposed this motion. Following arguments on this motion, the ALJ granted DECo’s motion. The ALJ set a date in September 2000 for a subsequent prehearing conference.

On June 19, 2000, without any advance notice, receipt of motions, briefing, or other input by the parties to this case. the MPSC issued an order on its own motion dismissing this case

in its entirety. The Commission Order concluded that these proceedings conducted under Act 304 were inconsistent with Section 10 of 2000 PA 141, signed by the Governor on June 3, 2000, and that the case should therefore be dismissed. The Commission's Order stated in part:

On June 5, 2000, the Commission issued an order in Case No. U-12464 implementing the rate reduction for residential customers and requiring Detroit Edison to file tariff sheets. With that reduction, all of the retail rates now in effect may not be changed until at least December 31, 2003 except to reflect the effects of securitization. The implementation of a PSCR plan for Detroit Edison, which is designed to adjust rates for changes in the costs of fuel and purchased power, is inconsistent with subsection 10d(1). Therefore, Detroit Edison's application must be dismissed.'

'On May 1, 1999, the Michigan Environmental Council (MEC) and the Public Interest Research Group in Michigan (PIRGIM) filed an application for leave to appeal and motion for immediate consideration regarding testimony stricken by the Administrative Law Judge in this proceeding. Although the testimony sought to address issues that may have been outside the jurisdiction of the Commission prior to June 5, 2000, the new law gives the Commission specific authority to require environmental disclosures (subsection 10r(3)) and creates an energy efficiency fund (subsection 10d(6)) as advocated by these parties. They are encouraged to participate in Case No. U-12487 and any subsequent proceedings involving the energy efficiency fund.

On this date, July 19, 2000, MEC and PIRGIM timely file this Motion and Brief seeking rehearing and reconsideration of the Commission's June 19, 2000 Order.

II. ARGUMENTS

A. The Commission's June 19, 2000 Orders Erroneously Rule That Act 304 Is to Be Suspended for DECo and CECo Based upon a Perceived Inconsistency Between Act 304, and 2000 PA 141, Contrary to the Commission's Duty to Construe, Harmonize, and Give Effect to All Statutes to the Degree That They Are Not Repugnant

The Commission's June 19, 2000 Order in this case concludes that Act 304 is suspended or terminated for DECo based upon a claimed or perceived inconsistency between Section 10 of 2000 PA 141 and Act 304. However, the Commission's conclusion is not supported by the statutory language of Section 10 nor by the overwhelming precedent in this State which establishes

that repeals or suspensions of statutes by implication are strongly disfavored, and establishing that existing and new statutes are to be construed and enforced *in para materia* with existing statutes to the degree that they are not repugnant. In this case, the MPSC could have readily determined that Act 304 and 2000 PA 141 are not inconsistent or repugnant to a significant degree. Equally important, with respect to MEC and PIRGIM's issues and requested relief prefiled or presented in this case, there exists no area of inconsistency because MEC and PIRGIM's case did not request or depend upon a change in rates, but sought to invoke related regulatory powers of the Commission established by Act 304.

1. ***The Commission's June 19, 2000 ruling is unlawful and contrary to binding judicial precedent governing the interpretation of statutes.***

The Commission's unexpected and precipitous ruling of June 19, 2000 dismissing this case is contrary to the procedural rights of the parties, and is also based upon unstated conclusions regarding the effect of 2000 PA 141 upon Act 304 which are arrived at contrary to settled judicial precedent concerning the manner in which statutes are to be construed.

When determining legislative intent, statutory language should be given a reasonable construction considering its purpose and object sought to be accomplished. An act must be read in its entirety, giving due consideration to all sections so as to produce, if possible, harmonious and consistent effect to the enactment as a whole. ***People v Jones***, 476 NW2d 646; 190 Mich App 509 (1991), appeal denied 480 NW2d 102; 439 Mich 937. ***People v Gregg***, 520 NW2d 690; 206 Mich App 208 (1994). The courts presume that every word has some meaning, and avoid any construction that would render a statute, or any part of it, surplusage or nugatory. ***People v Grayer***, 599 NW2d 527; 235 Mich App 737 (1999).

The Commission, without meaningful discussion, simply dismisses this case upon the misperception that 2000 PA 141 suspends or terminates all rate and non-rate review powers of the Commission for DECo and CECo. However, this is not correct. No language in 2000 PA 141 or 2000 PA 142 specifically states that the legislature intended to repeal any existing statutes governing utility regulation, to dismiss any ongoing cases, to make the new statutes retroactive, or to foreclose any regulatory review of important matters provided for under the Commission's ratemaking and enabling Acts (such as Section 6, and Gas MCL 460.6 *et seq.*, Section 7, MCL 460.157, Sections 8, MCL 460.58, Section 10(g) and 22, MCL 462.10(g) and MCL 462.22, or under the broader remedial provisions of 1982 Act 304 (Section 6j *et seq.*, MCL 460.6j *et seq.*).

It is presumed that legislature knows of and intends to legislate in harmony with existing law. *People v Cash*, 419 Mich 230 (1984). *State Bar of Michigan v Galloway*, 335 NW2d 475; 124 Mich App 271 (1983), affirmed 369 NW2d 839; 422 Mich 188. Statutes, even though enacted at different times, should be read together and each given effect if such can be done without repugnancy, absurdity or unreasonableness. *Board of Ed of Rochester Community Schools v Michigan State Bd of Ed*, 305 NW2d 541; 104 Mich App 569 (1981); *State Bar of Michigan v Galloway*, 335 NW2d 475; 124 Mich App 271 (1983), affirmed 369 NW2d 839, 422 Mich 188.

Moreover, repeals by implication are not favored. To establish a repeal by implication, clear legislative intent to repeal must be demonstrated. Also, the burden of establishing the repeal is on the party claiming repeal. *Rocco v Michigan Dept of Mental Health*, 319 NW2d 674; 114 Mich App 792 (1982), affirmed 363 NW2d 641; 420 Mich 567. The presumption is always against any intention to repeal a statute where express terms are not used, and so long as the court can point to any other reasonable construction. *Ficano v Lucas* 315 NW2d 198; 133 Mich App 268 (1984).

In determining whether a statute is repealed by a subsequent statute, the statutes must be construed together and reconciled, with each being given force and effect if possible. The presumption is against a repeal by implication, the theory being that had the legislature intended a repeal, it would have expressly so stated by designating the specific acts or parts of acts repealed. Only if there is such repugnance that both statutes cannot operate, will the last expression of legislative control. *People v Waterman*, 358 NW2d 602; 137 Mich App 429 (1984).

Where two statutes are in apparent conflict, they should be construed to give each full force and effect, if possible. *People v Cooke*, 317 NW2d 594; 113 Mich App 272 (1982), affirmed 355 NW2d 88; 419 Mich 420. Where, by reasonable construction, two statutes can be reconciled and the purpose of each can be served, it is the duty of courts to reconcile and enforce such statutes. *Manville v Board of Governors of Wayne State University*, 272 NW2d 162; 85 Mich App 628 (1978). Moreover, seeming inconsistencies in different provisions of the same statute should be reconciled if possible to arrive at a meaning that gives appropriate effect to all parts of the statute. *Arbor Sales, Inc. v Dept of Treasury*, 304 NW2d 522; 104 Mich App 181 (1981).

Statutes in *pari materia* are to be construed together, and therefore courts will regard all statutes upon the same general subject matter as part of one system. Since repeals by implication are not favored, later statutes should be construed as supplementary or complementary to those preceding them. *Ziegler v Witherspoon*, 49 NW2d 318; 331 Mich 337 (1951); *Flint Bd of Ed v Williams*, 276 NW2d 499; 88 Mich App 8 (1979). Strict construction of statute should not be followed where such construction would defeat the main purposes of other statutes relating to the same subject. *City of Detroit v Michigan Bell Tel Co.* 132 NW2d 660; 374 Mich 543 (1965), appeal dismissed and certiorari denied 86 S Ct 256; 382 US 107, 15 L Ed 2d 191; *Rathbun v State*, 280 NW 35; 284 Mich 521 (1938).

The Commission can point to no express language in 2000 PA 141 that repeals any statutes, or directs dismissal of any ongoing cases. Moreover, there remains several options for interpreting 2000 PA 141 in a manner which is consistent with the Commission's other statutes, including Act 304. Since options exist for interpreting all of the Commission's statutes, including Act 304, *in peri materia* or in a consistent fashion, the Commission erred in finding that there is a statutory repugnancy which compels the dismissal of this case under Act 304.

2. ***The new statute, 2000 PA 141, did not suspend or terminate Act 304 and other regulatory statutes for DECo and CEC.***

The Commission's June 19, 2000 orders determining that DECo and CEC's rates are frozen, and that therefore Act 304 and the complaint and other statutes applicable to the Commission are suspended or terminated, is simply not supported by the language of 2000 PA 141 or by legislative intent.

First, as noted, no language in 2000 PA 141 states that any existing statutes applicable to the MPSC are suspended, repealed, or limited by 2000 PA 141, or that pending proceedings may be simply dismissed.

Second, 2000 PA 141, does not exactly freeze rates for DECo or CEC for specified periods. Rather, the statute appears to **cap** residential rates subject to potential further rate reductions.²

Third, 2000 PA 141, even if interpreted as freezing rates, does not affect other significant review functions and regulatory powers of the Commission (as discussed *infra*) subsection 3). The **rate** aspects are related to offsets, credits, or netting of stranded and implementation costs, which are matters also relevant to ongoing special cases and securitization

²For example, Section 10d(1), refers to a 5 percent reduction for residential rates only. Section 10d(2) refers specifically to the rate reduction as "capped rates." Section 10d(4) states that: "A rate reduction under this subsection shall not be less than 5% required under subsection (I)." Subsection 10d(5) refers to "further rate reductions." Section 10d(7) states that "the Commission shall not authorize any freeze or charges that will cause the residential rate reduction required under subsection (I) to be less than 5%."

cases pending before the Commission. Other significant review functions of the Commission includes reviewing and enforcing least-cost planning (i.e., annual plans and five-year forecasts under Act 304) and reviewing contracts and enforcing reasonableness and prudence in the management and acquisition of energy supplies, and the ensuing costs thereof, and to adhere to reasonable practices affecting services, among related matters (Subsection 3 *infra*).

Fourth, the Commission's interpretation of 2000 PA 141 appears inconsistent with provisions in the statute which reaffirms the establishment of a Utility Consumer Participation Board ("UCPB"), appointed by the Governor, to review and approve grant proposals for funding intervenor participation under Act 304. The new statute does not discontinue, suspend, or repeal any provision of Act 304, except for making some modest changes to the appointment of the UCPB. This indicates legislative intent that the Act 141 amendments should fit together with existing Act 304, and that the Commission's Act 304 powers should continue to be exercised.

3. ***The new statute, 2000 PA 141, and the Commission's existing statutes, including Act 304, and the enabling and complaint statutes, can readily be construed in a harmonious fashion to give effect and meaning to all statutes.***

Several reasonable interpretations exist for the Commission and courts to construe and give effect to 2000 PA 141 and the Commission's existing statutes, in a harmonious and consistent fashion. Since these interpretational approaches exist, they should be adopted and enforced to be consistent with judicial precedent governing statutory interpretation.

- a. *The 5 percent rate reductions referred to in Section 10d(1) of 2000 PA 141 can be construed as a reduction to base rates, and not a change in the rate tariff comprising PSCR clauses operating pursuant to the extensive provisions of the non-repealed Act 304.*

One way to harmoniously construe 2000 PA 141 is to recognize the extensive non-repealed provisions of Act 304 comprise a tariff rate, which adjust through the use of temporary.

interim PSCR factors, subject to final reconciliation. Since all of Act 304 remains unrepealed, it must be given effect. The legislature in 2000 PA 141 must have intended a 5 percent rate reduction to base rates for DEC₀ and CEC₀, leaving unchanged the PSCR tariff rate (incorporating the PSCR clauses) which should continue to operate under Act 304.

- b. *The scope of Act 304 proceedings involves review functions which go beyond merely the setting of rates or adopting specific rate adjustments.*

The Commission's June 19, 2000 order fails to recognize that the scope of Act 304 goes far beyond simply the mathematical calculation of rates. Act 304 also provides powers and duties to the Commission to conduct a broader review of the utilities' contracting, purchasing, and generation activities besides merely adopting potential rate adjustments to hold a utility to reasonable and prudent conduct. Act 304 provides a mechanism for Commission review of annual plans and five year forecasts of utilities' energy acquisition, purchasing, and generation decisions, so as to encourage proper planning and least cost acquisition of energy, and to ensure that utility decisions related thereto are reasonable and prudent (e.g., Section 6j(a)3 through 6j(a)7, MCL 460.6j(a)3 *et seq.*). The Act thus provides mechanisms for the Commission to protect ratepayers and the public interest by undertaking review functions in addition to the threat of ratemaking adjustments. Thus, even if the Commission adopts the interpretation that Act 141 freezes rates, which cannot be changed upward or downward until 2003 or beyond, this still would not suspend the Commission's review functions under Act 304 wherein the Commission can undertake other steps to protect ratepayers and the public interest. For instance, the Commission could require the utility to undertake energy efficiency planning to reduce its long term costs relative to meeting peak load capacity requirements,

and overall customer loads, as recommended by MEC and PIRGIM's witness Kushler.³ Similarly, the Commission could require steps to escrow or otherwise protect the fees being collected from ratepayers for the Nuclear Waste Fund, as advocated by MEC and PIRGIM's witness Callen in this case. None of these important actions would necessarily require changes in rates or rate levels.

Under applicable precedent, the Commission should therefore have selected an interpretation that would give consistency and meaning to all statutory provisions, including Act 141 and Act 304, *in pari materia*. By failing to do so, the Commission's Order erred.

- c. *The issues in this case, and in rate complaint cases in U-11560 (CECo) and U-1 1495 (DECo), are also relevant to the Commission's remaining existing duties to determine reasonable rates, to implement 2000 PA 141 by determining appropriate stranded and transition costs, and proper offsets thereto, among related duties.*

Even if rates are not to be changed for DECo or CECo under 2000 PA 141, the determinations concerning excess earnings, returns, or rates can remain a proper consideration in determining appropriate stranded or transition costs to be granted the utility in implementing 2000 PA 141. As a result, the Commission's existing review functions under Act 304, the complaint statutes, and the Commission's other ratemaking statutes can be fully rationalized as being consistent with 2000 PA 141. Therefore, the issues and proposed remedies being presented to the Commission in the Act 304 case (U- 12 121), and the rate complaint cases (U- 11560 and U- 11495) are relevant in determining the appropriate stranded or other transition costs to be recognized for DECo and CECo in implementing 2000 PA 141.⁴ They also may be relevant to any on-going true-up proceedings. For

³The Commission's authority to adopt regulation which promotes energy conservation and efficiency is securely established. Act 304, MCL 460.6j *et seq.*, Section 6c(1), MCL 460.6c(1) *et seq.*, Section 6m(12) and (13), MCL 460.6m(12) and (13), Section 6n, MCL 460.6n, MPSC Order, March 29, 1990, U-9 172; MPSC Order, Case U- 10574, October 12, 1994, *Detroit Edison v MPSC*, 221 Mich App 370, 383-386, 389 (1997); *ABATE v PSC*, 205 Mich App 383, 388-389 (1994).

⁴The new statute provides for an across the board legislative rate reduction of 5 percent for DECo and CECo, to be financed by securitization, but contemplates further potential rate reductions [see. Sections 10d(2), 10d(4), 10d(7)]. Moreover, the new statute expressly provides the Commission with the authority to determine a proper level of net stranded costs (if

example, if the Commission finds that the utilities are enjoying excess returns and earnings due to a number of changing factors, such as steadily decreasing coal costs, the cessation of the expense amortization for the Midland abandonment (which runs out in 2000 or 2001), among a myriad of other major cost issues, the Commission could appropriately determine that the amount of stranded cost recovery should be offset thereby. It seems inconsistent for utilities to claim large stranded costs, as unrecovered and recoverable items, or transition costs, if in fact they are earning far in excess of their authorized returns.’ It also seems inconsistent for utilities to claim stranded cost investments when they are also claiming dangerously low capacity reserve levels for meeting increasing load growth and peak load demand, and when their sales and sales forecast are steadily increasing with increasing electric demand. If the utility’s capacity is being utilized at full tilt, and its earnings are far in excess of authorized returns, it would appear that the utility’s stranded and transition cost claims should be reduced or offset accordingly.

If the Commission proceeds to dismiss the rate complaint cases and the Act 304 cases for DECo and CECo, these related rate reviews, which are useful in properly implementing 2000 PA 141, will be unreasonably foreclosed. The resulting situation will be that no dockets will exist to consider appropriate offsets to stranded or implementation costs, and that the only dockets that will be considered by the Commission are rate increase or surcharge dockets favorable to the utilities, regardless of the state of competition, the market place, or the earning levels being enjoyed by the utilities on an on-going basis.

any), and implementation costs, relative to electric restructuring [Sections 10a(1); 10d(5) e.g., “credits”; Section 10(2)(d) regarding “reasonable rates”]. These findings, particularly stranded costs, also affect the level of securitization that may be ultimately determined.

‘Such offsets to stranded or implementation costs are also appropriate in view of the fact that rate of return authorizations have normally been adopted by comparing or determining the rates of return being earned by competitive private industries. Thus the previous authorized rates of return were deemed to be comparable with private competitive firms in the market place.

- d. *The parties should be granted the opportunity to present in the complaint cases and Act 304 PSCR cases, additional remedies or relief which is consistent with 2000 PA 141.*

Consistent with the above arguments, the Commission should not precipitously foreclose the deliberative input of the parties in the ABATE complaint rate cases, or in Act 304 PSCR cases relative to issues and remedies which are appropriately explored under existing statutes and 2000 PA 141 when construed in a harmonious and complementary fashion. All of these cases were well advanced as of June 19, 2000, and could be considered and resolved in conjunction with cases arising under 2000 PA 141.⁶

The Commission should therefore reverse its June 19, 2000 ruling and permit all pending cases, including the rate complaint cases (U-1 1560 and U-11495), and DECo's and CECo's PSCR cases (including U-12121), to go forward to completion and final Commission decisions.

B. The Commission's Order Dismissing this Case Fails to Recognize That MEC and PIRGIM's Evidentiary Case and Requested Relief under Act 304 (U-12121), and in the Rate Complaint Cases (U-11560 and U-11495) Are Wholly Unaffected by Section 10 of 2000 PA 141, Because MEC and PIRGIM's Requested Review and Remedies Do Not Involve a Proposed Change in Rates or Rate Levels

The Commission's June 19, 2000 Order dismissing this case (and the rate cases) fails to recognize that the requested review and remedies sought by MEC and PIRGIM in their evidentiary cases in the Act 304 docket (U-12121), and also in the rate case dockets (U-1 1560 and U-1 1495) are wholly unaffected by 2000 PA 141, even accepting, *arguendo*, the Commission's analysis, because MEC and PIRGIM requested remedies do not depend upon or seek a change in rates, rate levels or

⁶For example, in ABATE's rate complaint case involving DECo, U-1 1495, the Proposal for Decision and all Exceptions have been filed and the case is awaiting Commission decision. In CECo's U-1 1560, the evidentiary phase is completed, and briefing is presently in limbo due to the Commission's dismissal orders. In U-12 121, only the testimony of one witness, Mr. Callen, remains for cross-examination, and this testimony and briefing could be received on an expedited basis.

other rate adjustments. Therefore, the Commission's analysis is inapplicable, and cannot serve as a basis for dismissing this case and thereby depriving MEC and PIRGIM of their statutory intervention and participation rights under Act 304, the complaint and enabling statutes, the APA, and the Commission's Rules.

In U- 12 12 1, the prefiled testimony and exhibits of Mr. Callen regarding the high level nuclear waste and related fee issues outlines the current status of the federal program's failures, DECo's inadequate response thereto to protect ratepayers, taxpayers, and the public interest, and a number of recommended optional remedies for the Commission to consider for adoption under Act 304. The suggested remedies offered by MEC and PIRGIM can run the gamut from a declaratory ruling, to the adoption of an escrow or partial escrow of the fees being collected in Act 304 rates for the Nuclear Waste Fund, to the filing of an additional performance bond by DECo, among similar remedies. None of these proposed remedies would propose or require either a rate reduction or increase, or an adjustment to rates collected from DECo's customers. Rather, the remedies would invoke terms and conditions concerning the funds that are collected in rates to better protect ratepayers, taxpayers and the public interest.

Similarly, the prefiled testimony and exhibits of Dr. Kushler concerning energy efficiency issues and recommendations presented in all three dockets, U-12 121, U- 11560, and U- 11495, also did not propose or require a change in rates. Rather, Dr. Kushler primarily recommended that the utilities engage in energy efficiency programs, to be financed long term by the savings resulting from said program, in the form of reduced energy waste, conservation, and lower fuel and capacity costs, resulting from better load and peak-load management.

Because the Commission's analysis giving rise to the dismissal of this case is inapplicable to MEC and PIRGIM's case presentation, and to the remaining aspects of the Commission's review and regulatory powers, the Commission should reverse its Order dismissing this case, and allow it to be completed by receiving Mr. Callen's and Dr. Kushler's testimony and exhibits, and complete briefing of the parties, followed by a deliberative Commission decision. In this briefing process, all legal issues concerning the remedies proposed by MEC and PIRGIM will be fully explored and resolved.

C. **The Commission Erred Procedurally by Dismissing this Case Without a Motion or Formal Input by the Parties, and in a Manner Which Violates the Parties' Statutory and Constitutional Rights under the Commission's Ratemaking and Rate Complaint Statutes, Act 304, the APA, the Commission's Rules, and Constitutional Due Process**

The Commission's June 19, 2000 rulings, which summarily and precipitously dismiss the rate complaint cases, and the PSCR cases for CECo and DECo, also violates the parties' statutory and constitutional rights. These cases have been commenced pursuant to the Commission's statutes governing ratemaking, Act 304, the APA, the Commission's Rules, all of which guaranteed the right to notice and hearing, the presentation of evidence, briefing, the rendering of an ALJ decision, and the rendering of a Commission decision based upon a full evidentiary record and the briefing arguments of the parties. Because the statutes applicable to the Commission provide for notice and hearing, these hearing procedures are therefore also guaranteed by Constitutional due process principles.

The parties have invested heavily in these cases in terms of time, effort and financial resources, and have litigated the cases almost to conclusion. Any legal issues which relate to the relationship of 2000 PA 141, and the Commission's remaining existing statutory ratemaking powers, would most readily be resolved through a process which recognizes the participation of the parties

in the on-going cases. The Commission trampled over the notice and hearing rights of the parties by summarily dismissing all of these cases without allowing this participation by the parties to guide the Commission in reaching these important determinations. In so doing, the Commission has violated the procedural rights guaranteed to the parties by statutes and the Constitution.

The nature of the Commission's errors in this regard are amplified by other important considerations: First, the Legislature in 2000 PA 141 included no specific language indicating that any ongoing rate proceedings before the MPSC were to be arbitrarily dismissed without a deliberative decision of the MPSC, based upon the compiled evidentiary records and briefing guaranteed the parties under the existing statutes, the APA, the Commission's Rules, and the Due Process clauses of the state and federal constitutions. Yet, the Commission has improperly trampled on these rights by simply dismissing all ongoing rate and PSCR cases for both CECo and DECo. Instead, the MPSC should have directed all parties in ongoing cases to include in their briefs discussion of the impact of 2000 PA 141 and 2000 PA 142 on their positions in the cases. The MPSC thereafter would be in a position to render a deliberative decision based upon the evidentiary records and the briefs in all of these cases. Second, the Commission's dismissal of all pending cases involving DECo and CECo (rate complaint and Act 304 cases) was wholly unnecessary to the unrelated action of immediately implementing the 5 percent residential rate reductions provided for in 2000 PA 141. Quite simply, the immediate rate reduction implementation was not in any way dependent upon dismissing the ongoing cases. The Commission could have simply implemented the 5 percent rate reduction in the June 19, 2000 orders, while respecting the parties' rights to continue to exercise their statutory and constitutional hearing rights input upon all remaining legal and factual issues in the cases, including exploring the impact of 2000 PA 141 on Act 304 and other ratemaking statutes, and upon their respective cases and requested remedies.

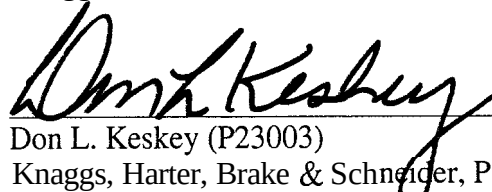
III. CONCLUSION AND RELIEF

Based upon the above arguments, MEC and PIRGIM request the Commission to reverse its June 19, 2000 ruling in this case which dismissed this case, and to reinstate this case, U-12121, pursuant to the remaining schedule in the case, and in accordance with the statutory and constitutional rights of the parties. MEC and PIRGIM request such further and consistent relief which is lawful and reasonable.

Respectfully submitted,

MICHIGAN ENVIRONMENTAL COUNCIL and
the PUBLIC INTEREST RESEARCH GROUP
IN MICHIGAN

By Their Attorneys,
Knaggs, Harter, Brake & Schneider, P.C.

A handwritten signature in black ink, appearing to read "Don L. Keskey", is written over a horizontal line.

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DATED: July 19, 2000