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May 2, 2001

Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909-7721

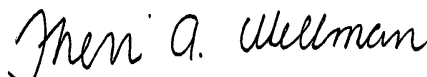
Re: MPSC Case Nos. U-12649, U-12650 and U-12651
(e-file)

Dear Ms. Wideman:

Enclosed for filing are an original and four (4) copies of the Response of the Upper Peninsula Companies to Michigan Environmental Council and the Public Interest Research Group in Michigan's Joint Emergency Application for Leave to Appeal and the Response of the Upper Peninsula Companies to Michigan Community Action Agency Association's Emergency Application for Leave to Appeal. Also, enclosed is a Proof of Service.

Very truly yours,

LOOMIS, EWERT, PARSLEY,
DAVIS & GOTTING, P.C.


Sherri A. Wellman

SAW:blp
enclosures

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
WISCONSIN ELECTRIC POWER COMPANY	)	
and EDISON SAULT ELECTRIC COMPANY	)	Case No. U-12649
for approval of its plan to implement	)	
2000 PA 141.	)	
_____	)	

In the matter of the application of	)	
WISCONSIN PUBLIC SERVICE	)	
CORPORATION and UPPER PENINSULA	)	Case No. U-12650
POWER COMPANY for approval of its plan	)	
to implement 2000 PA 141.	)	
_____	)	

In the matter of the application of	)	
NORTHERN STATES POWER COMPANY-	)	
WISCONSIN d/b/a/ Xcel Energy	)	Case No. U-12651
for approval of its plan to implement	)	
2000 PA 141.	)	
_____	)	

**RESPONSE OF THE UPPER PENINSULA COMPANIES TO
MICHIGAN ENVIRONMENTAL COUNCIL AND THE PUBLIC
INTEREST RESEARCH GROUP IN MICHIGAN’S JOINT
EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

On April 18, 2001, the Michigan Environmental Council (“MEC”) and the Public Interest Research Group in Michigan (“PIRGIM”) filed a Joint Emergency Application for Leave to Appeal Administrative Law Judge (“ALJ”) Nickerson’s April 4, 2001 Ruling striking the prefiled testimony and exhibits of Martin G. Kushler, and striking in part the testimony and exhibits of Ronald C. Callen. Pursuant to Rule 335(3) of the Commission’s Rules of Practice and Procedure, R 460.17335(3), Wisconsin Electric Power Company, Edison Sault Electric Company, Wisconsin Public Service Corporation, Upper Peninsula Power Company and Northern States Power Company-Wisconsin (collectively referred to as the “Upper Peninsula Companies”) respond in support of ALJ

Nickerson's April 4, 2001 Ruling and in opposition to MCAAA's Application for Leave to Appeal, and state as follows:

1. In his April 4, 2001 Ruling, ALJ Nickerson properly held that the scope of these proceedings is defined by the language in Sections 10a and 10b of 2000 PA 141 ("Act 141") and by the Michigan Public Service Commission's ("Commission") Order issued in Case No. U-12464 on June 19, 2000 (3 TR 142-143).

2. These proceedings involve the implementation of Sections 10a and 10b of Act 141. The Commission's implementation of these sections involves the establishment of terms and conditions and the unbundling of existing rates to allow customers to choose an alternative electric supplier. Sections 10a(1) and 10b(2) of Act 141 provide as follows:

Sec. 10a. (1) No later than January 1, 2002, the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall provide for full recovery of a utility's net stranded costs and implementation costs as determined by the commission.

* * *

Sec. 10b. (2) No later than 1 year from the effective date of the amendatory act that added this section, each electric utility shall file an application with the commission to unbundle its **existing** commercial and industrial rate schedules and separately identify and charge for their discrete services. No earlier than 1 year from the effective date of the amendatory act that added this section, the commission may order the electric utility to file an application to unbundle **existing** residential rate schedules. The commission may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing. The commission shall allow recovery by electric utilities of all just and reasonable costs incurred by electric utilities to implement and administer the provisions of this subsection [(Emphasis added)].

3. The Commission's June 19, 2000 Opinion and Order in Case No. U-12464 directed each investor owned electric utility, other than Consumers Energy Company and The Detroit Edison Company, to file, no later than October 2, 2000, a restructuring plan in compliance with Sections 10a and 10b Act 141.

4. Pursuant to the Commission's directive in Case No. U-12464, on or before October 2, 2000, the Upper Peninsula Companies each filed their restructuring plans (Case Nos. U-12649, U-12650, and U-12651).

5. On December 20, 2000, ALJ Nickerson declared in his ruling made from the bench that these consolidated proceedings are limited to the unbundling of **existing** rates, and do not involve rate setting, securitization, and issues relating to power supply cost recovery ("PSCR") proceedings and the disposal of nuclear waste (2 TR 87-88). No party took appeal from the December 20, 2000 Ruling.

6. On April 4, 2001, ALJ Nickerson simply reaffirmed his December 20, 2000 Ruling. In his April 4, 2001 Ruling ALJ Nickerson declared:

The scope of these proceedings is not defined by the prefiled testimony. Rather, the testimony is to fit what the scope of these proceedings are as defined by the Commission order in U-12464.

The relevant section of the Public Act 141 is specifically 10a, which has been identified by counsel. I think this scope defines the relevant testimony to be considered in this case. My earlier rulings indicate that I thought that the Commission intended that this be a narrow-scope proceeding [(3 TR 142-143)].

7. The Upper Peninsula Companies agree with ALJ Nickerson that the scope of the proceeding determines what evidence is relevant, and thus, admissible.

8. ALJ Nickerson properly held that the testimony and exhibits of Martin G. Kushler as filed on behalf of MEC and PIRGIM are irrelevant as they are wholly unrelated to the limited purpose of these consolidated proceedings (3 TR 144). Mr. Kushler's testimony and exhibits promote the establishment of **new** load management, low-income and energy efficiency programs. However, the establishment of new load management, low income and energy efficiency programs are unrelated to the terms and conditions of service which allow a customer to choose an alternative

electric supplier. Furthermore, the establishment of the proposed funding procedures would either involve securitization or ratemaking, which is beyond the scope of these consolidated proceedings.

9. ALJ Nickerson correctly noted that a significant majority of Mr. Callen's testimony and exhibits address problems associated with the disposal of spent nuclear fuel, i.e. the alleged failure of the federal government to meet its contractual obligation, utility actions to compel federal government to comply, etc., which is beyond the scope of these proceedings (3 TR 144).

10. MEC and PIRGIM argue in its joint application for leave to appeal that ALJ Nickerson's ruling was premature. This argument is without merit. ALJ Nickerson addressed this very same argument from the bench in his April 4, 2001 ruling. Upper Peninsula Companies agree with ALJ Nickerson that granting the motion to strike was not premature as there would be harm to the utilities in not granting the motion because they would have to expend time and energy to prepare responses to the testimony which is irrelevant to in the scope of these proceedings (3 TR 143).

11. Finally, the Upper Peninsula Companies agree with ALJ Nickerson's conclusion that the Commission is implementing Act 141 incrementally (3 TR 143). As demonstrated by Attachment A to this Answer, there are many proceedings involving Act 141, and each proceeding has implemented a different section of the Act.¹ In this case, the Commission has chosen to implement sections 10a(1) and 10b(2). Thus, although the issues raised by MEC and PIRGIM's witnesses may suffer in another proceeding yet to be implemented, nevertheless, they are irrelevant to these proceedings. Thus, Mr. Kushler's and a portion of Mr. Callen's testimony and exhibits were appropriately struck.

¹ Additionally, in Case No. U-11341, the Commission had interested parties comment on the disposal of spent nuclear fuel and the federal government's role, etc. On December 4, 2000, the Commission dismissed that proceeding.

WHEREFORE, the Upper Peninsula Companies respectfully request that MEC and PIRGIM's joint application for leave to appeal be denied and that ALJ Nickerson's April 4, 2001 Ruling be affirmed.

Date: May 2, 2001

By: *Sherri A. Wellman*
One of its Attorneys
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Sherri A. Wellman (P-38989)
Lisa A. Hanson (P-60231)
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Lansing Michigan 48933
(517) 482-2400

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U-12270	6-19-00	Sec. 10p(5)	Consideration of methods to improve the reliability of electric service. Comments invited on Staff's May 1, 2000 proposal.
U-12464	6-19-00	Sec. 10a	Electric utilities and cooperatives should file restructuring implementation plans permitting retail customers to choose an alternative electric supplier.
	6-5-00	Sec. 10d	Electric utilities with more than 1,000,000 retail customers shall file tariff sheets incorporating a 5% reduction in each rate element.
	6-19-00	Sec. 10s	Utilities shall report reductions in federal funding for low-income and energy assistance programs to the Commission.
U-12485	6-19-00	Sec. 10e(3)	Initiated proceeding to establish standards for the interconnection of merchant plants with the transmission and distribution systems of electric utilities (which are to file proposed standards).
U-12486	6-19-00	Sec. 10d(9)	Electrical power generating facilities are to file reports showing that they are in compliance with all applicable federal EPA mercury regulations.
U-12487	6-19-00	Sec. 10r	The Commission is to establish form and content standards for information disseminated by sellers of electric service. Proposals invited for implementing notice requirements.
U-12533	7-17-00	Sec. 10f(6)	Comments invited prior to the Commission issuing a report to the governor and legislature analyzing all aspects relating to market power in the Upper Peninsula.
U-12639	10-24-00	Sec. 10a(10)	Contested case proceeding initiated to produce a complete evidentiary record to assist the Commission in prescribing a methodology for stranded cost computations.
U-12640	10-6-00	Sec. 10a(3)	Broad participation encouraged in developing anti-slamming/anti-cramming procedures.
U-12915	4-17-01	Sec. 10r(6)	Procedure initiated to receive public comments regarding the Staff's December 14, 2000 proposal for implementation of the Michigan Renewables Energy Program.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
WISCONSIN ELECTRIC POWER COMPANY	)	
and EDISON SAULT ELECTRIC COMPANY	)	Case No. U-12649
for approval of its plan to implement	)	
2000 PA 141.	)	
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In the matter of the application of	)	
WISCONSIN PUBLIC SERVICE	)	
CORPORATION and UPPER PENINSULA	)	Case No. U-12650
POWER COMPANY for approval of its plan	)	
to implement 2000 PA 141.	)	
_____	)	

In the matter of the application of	)	
NORTHERN STATES POWER COMPANY-	)	
WISCONSIN d/b/a/ Xcel Energy	)	Case No. U-12651
for approval of its plan to implement	)	
2000 PA 141.	)	
_____	)	

**RESPONSE OF THE UPPER PENINSULA COMPANIES TO
MICHIGAN COMMUNITY ACTION AGENCY ASSOCIATION'S
EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

On April 18, 2001, Michigan Community Action Agency ("MCAAA") filed an Emergency Application for Leave to Appeal Administrative Law Judge ("ALJ") Nickerson's April 4, 2001 Ruling striking the testimony and exhibits of Geoffrey C. Crandall. Pursuant to Rule 335(3) of the Commission's Rules of Practice and Procedure, R 460.17335(3), Wisconsin Electric Power Company, Edison Sault Electric Company, Wisconsin Public Service Corporation, Upper Peninsula Power Company and Northern States Power Company-Wisconsin (collectively referred to as the "Upper Peninsula Companies") respond in support of ALJ Nickerson's April 4, 2001 Ruling and in opposition to MCAAA's Application for Leave to Appeal, and state as follows:

1. In his April 4, 2001 Ruling, ALJ Nickerson properly held that the scope of these proceedings is defined by the language in Sections 10a and 10b of 2000 PA 141 (“Act 141”) and by the Michigan Public Service Commission’s (“Commission”) Order issued in Case No. U-12464 on June 19, 2000 (3 TR 142-143).

2. These proceedings involve the implementation of Sections 10a and 10b of Act 141. The Commission’s implementation of these sections involves the establishment of terms and conditions and the unbundling of existing electric rates to allow customers to choose an alternative electric supplier. Sections 10a(1) and 10b(2) of Act 141 provide as follows:

Sec. 10a. (1) No later than January 1, 2002, the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall provide for full recovery of a utility’s net stranded costs and implementation costs as determined by the commission.

* * *

Sec. 10b. (2) No later than 1 year from the effective date of the amendatory act that added this section, each electric utility shall file an application with the commission to unbundle its **existing** commercial and industrial rate schedules and separately identify and charge for their discrete services. No earlier than 1 year from the effective date of the amendatory act that added this section, the commission may order the electric utility to file an application to unbundle **existing** residential rate schedules. The commission may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing. The commission shall allow recovery by electric utilities of all just and reasonable costs incurred by electric utilities to implement and administer the provisions of this subsection [(Emphasis added)].

3. The Commission’s June 19, 2000 Opinion and Order in Case No. U-12464 directed each investor owned electric utility, other than Consumers Energy Company and The Detroit Edison Company, to file, no later than October 2, 2000, a restructuring plan in compliance with Sections 10a and 10b of Act 141.

4. Pursuant to the Commission’s directive in Case No. U-12464, on or before October 2, 2000, the Upper Peninsula Companies each filed their restructuring plans (Case Nos. U-12649, U-12650, and U-12651).

5. On December 20, 2000, ALJ Nickerson declared in his ruling made from the bench that these consolidated proceedings are limited to the unbundling of **existing** rates, and do not involve rate setting, securitization, and issues relating to power supply cost recovery (“PSCR”) proceedings and the disposal of nuclear waste (2 TR 87-88). No party took appeal from the December 20, 2000 Ruling.

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The scope of these proceedings is not defined by the prefiled testimony. Rather, the testimony is to fit what the scope of these proceedings are as defined by the Commission order in U-12464.

The relevant section of the Public Act 141 is specifically 10a, which has been identified by counsel. I think this scope defines the relevant testimony to be considered in this case. My earlier rulings indicate that I thought that the Commission intended that this be a narrow-scope proceeding [(3 TR 142-143)].

7. The Upper Peninsula Companies agree with ALJ Nickerson that the scope of the proceeding determines what evidence is relevant, and thus, admissible.

8. ALJ Nickerson properly held that the testimony and exhibits of Geoffrey C. Crandall as filed on behalf of MCAAA are irrelevant as they are wholly unrelated to the limited purpose of these consolidated proceedings (3 TR 144). Mr. Crandall’s testimony and exhibits promote the establishment of **new** load management, low-income and energy efficiency programs. Mr. Crandall recommends funding these **new** programs through “excess savings” from securitization¹ or through the establishment of **new** non-bypassable surcharge.

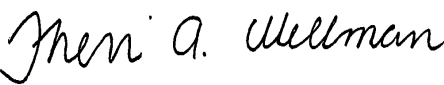
¹Section 10d(6) of Act 141, upon which MCAAA relies, is limited to funding the low-income and energy efficiency fund with excess securitization savings. However, none of the Upper Peninsula Companies have filed applications for securitization financing.

9. MCAAA argues in its application for leave to appeal, that ALJ Nickerson's ruling was premature. This argument is without merit. ALJ Nickerson addressed this very same argument from the bench in his April 4, 2001 Ruling. Upper Peninsula Companies agree with ALJ Nickerson that granting the motion to strike was not premature as there would be harm to the utilities in not granting the motion because they would have to expend time and energy to prepare responses to the testimony which is irrelevant to the scope of these proceedings (3 TR 143).

10. Finally, the Upper Peninsula Companies agree with ALJ Nickerson's conclusion that the Commission is implementing Act 141 incrementally (3 TR 143). As demonstrated by Attachment A to this Answer, there are many proceedings involving Act 141, each proceeding has implemented a different section of the Act. In this case, the Commission has chosen to implement sections 10a(1) and 10b(2). Thus, although the issues raised by MCAAA may surface in another proceeding yet to be initiated, they are nevertheless irrelevant to these proceedings. Thus, Mr. Crandall's testimony and exhibits were appropriately struck.

WHEREFORE, the Upper Peninsula Companies respectfully request that MCAA's application for leave to appeal be denied and that ALJ Nickerson's April 4, 2001 Ruling be affirmed.

Date: May 2, 2001

By: 
One of its Attorneys
Harvey J. Messing (P-23309)
Sherri A. Wellman (P-38989)
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
WISCONSIN ELECTRIC POWER COMPANY)
and **EDISON SAULT ELECTRIC COMPANY**) Case No. U-12649
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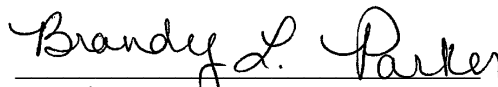
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_____)

In the matter of the application of)
NORTHERN STATES POWER COMPANY-)
WISCONSIN d/b/a/ Xcel Energy) Case No. U-12651
for approval of its plan to implement)
2000 PA 141.)
_____)

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF INGHAM)

Brandy L. Parker, being duly sworn, deposes and says that she is employed in the law office of Loomis, Ewert, Parsley, Davis & Gotting, P.C. and that on the 2nd day of April, 2001, she served a copy of the Response of the Upper Peninsula Companies to Michigan Environmental Council and the Public Interest Research Group in Michigan's Joint Emergency Application for Leave to Appeal and the Response of the Upper Peninsula Companies to Michigan Community Action Agency Association's Emergency Application for Leave to Appeal, upon the persons on the attached service list via e-mail and by enclosing same in a sealed enveloped with first-class postage fully prepaid, addressed to them at the addresses set forth and by depositing the envelopes and contents in the United States government mail.


Brandy L. Parker

Subscribed and sworn to before me
this 2nd day of May, 2001.



Edith D. Loomis, Notary Public
Ingham County, Michigan
My Commission Expires: 12/05/2002

IMPLEMENTATION PLAN 2000 PA 141
Case Nos. U-12469, U-12651, U-12651, U-12652 and U-12655

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