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** For Approval of its Plan to Implement 2000 PA 141 _____/	Case No. U-12649
In the Matter of the Application of **WISCONSIN PUBLIC SERVICE CORPORATION** and **UPPER PENINSULA POWER COMPANY** For Approval of its Plan to Implement 2000 PA 141 _____/	Case No. U-12650
In the Matter of the Application of **NORTHERN STATES POWER COMPANY - WISCONSIN,** doing business as Xcel Energy, For Approval of its Plan to Implement 2000 PA 141 _____/	Case No.U-12651
In the Matter of the Application of **INDIANA MICHIGAN POWER COMPANY d/b/a AMERICAN ELECTRIC POWER**, for Approval of its Plan to Implement 2000 PA 141. _____/	Case No. U-12652
In the Matter of the Application of **ALPENA POWER COMPANY** for Approval of its Plan to Implement 2000 PA 141. _____/	Case No. U-12655

MICHIGAN COMMUNITY ACTION AGENCY ASSOCIATION'S RESPONSE TO MPSC STAFF'S MOTION TO STRIKE THE TESTIMONY AND EXHIBITS OF GEOFFREY C. CRANDALL

The Michigan Community Action Agency Association ("MCAAA"), by and through its attorneys, Knaggs, Harter, Brake & Schneider, P.C., urges the Administrative Law Judge ("ALJ") to deny the Michigan Public Service Commission ("MPSC" or "Commission") Staff's Motion to Strike the Testimony and Exhibits of Geoffrey C. Crandall. Mr. Crandall's testimony and exhibits are within the scope of these hearings as defined by 2000 PA 141.[1] The Commission's June 19, 2000

[1] MCL 460.10A., *et seq*.; MSA

order in U-12464, the notices of hearing, the Commission's general authority to set rates, terms, and conditions of service and the ALJ's December 20, 2000 rulings. Moreover, it is premature to strike MCAAA's testimony on grounds of relevance in that neither the utilities' testimony or rebuttal testimony has been filed. In further support, MCAAA states:

1. 2000 PA 141 requires the Commission to restructure Michigan's electricity industry by January 2, 2002. To date, the Commission has restructured or "unbundled" The Detroit Edison Company's ("DECo") and Consumer Energy Company's ("CECo") electricity rates, terms and conditions of service through a series of contested cases. The scope of hearings in these consolidated cases for Michigan's smaller utility companies is first bounded by 2000 PA 141.

2. To fully implement PA 141, the Commission in U-12464 ordered Michigan's smaller utility companies in U-12464 to file "**a restructuring plan in compliance with the Act** that permits all of its retail customers to choose an alternative electric supplier no later than January 1, 2002." The Commission's identical notices of hearing in these cases again require these smaller utilities file restructuring plans "in compliance with 2000 PA 141." Nothing in PA 141, the Commission's June 19, 2000 order in U-12464 or its notices of hearing in these cases otherwise limits the scope of such hearings to merely the "unbundling of existing rates as claimed only by Staff."

3. For all utilities, the scope of PA 141 itself explicitly extends to, among other subjects, the following:

- Unbundling existing rates;
- Net stranded cost recovery and annual true-up proceedings;
- Recovery of implementation costs;
- An option to securitize;
- Establishment of a low-income and energy efficiency fund ("LI/EE");

- Other provisions for low-income and energy assistance programs, and utility shut-off protections (Sections 10s and 10t); and,

- Consideration by utilities, the Commission and ratepayers of the adequacy of transmission and generation capacity.

With respect to the LI/EE Fund, the Commission's orders in The Detroit Edison Company's ("DECo") securitization case, U-12478, concludes that:

> There are securitization savings available to establish and operate the LI/EE fund. The Commission will address all issues related to the implementation of that fund in other dockets. *Detroit Edison Company*, Opinion and Order, Case U-12478 (November 2, 2000), p 42.

4. Several of these small utilities are requesting relief under Act 141 which goes beyond Staff's view that these cases are merely about unbundling existing rates. For example, WEPCo is seeking implementation costs and would recover them from all ratepayers, rather than only those who would access alternative electric suppliers through retail open access. Others, including Indiana Michigan Power Company ("I&M"), may be making similar requests which go beyond merely "unbundling existing rates."

5. To be consistent with the Commission's full statutory authority and jurisdiction, and to be in full compliance with PA 141, such restructuring plans must also comply and be consistent with all rates, terms and conditions of service which are otherwise subject to the Commission's review. The Commission cannot issue an order in these cases which is otherwise inconsistent with or does not take into account such other rates, terms and conditions of service. If the Commission does so, it can only do so by addressing such issues in other cases which involve the implications of PA 141 so that the Commission can harmoniously apply its statutory authority to these regulated smaller utilities.

6. In these cases, the parties must look first to the full scope of PA 141 and in establishing tariffs, rates, and conditions of service for retail open access address the issues raised by PA 141. In particular, PA 141 permits each smaller utility company to request net stranded cost recovery with annual true-up proceedings, recovery of implementation costs, consideration of an option to securitize assets, allocation of funds for the LI/EE fund, and consideration of transmission and generation capacity. All such issues are within the scope of PA 141 and must be addressed before the Commission can find that each smaller utility company's electric restructuring plan is in "full compliance" with PA 141.

7. Any testimony presented in these cases which addresses issues otherwise raised by PA 141 and identified above is within the scope of these hearings and, under Michigan Rules of Evidence ("MRE"), MCR 401 and 402, must be deemed admissible. In that the Commission itself has ordered these smaller utility companies to comply with PA 141, no such evidence can be excluded under MRE 403.

8. The ALJ was first asked to address similar matters in the second prehearing in these cases. At that time, December 20, 2000, all seven of the smaller utility companies, apparently acting with one coordinated voice along with Staff objected to the petitions of the only intervenor rate groups to seek participation in these cases. Staff and these small utility companies objected that MCAAA would attempt unreasonably to seek the protections of PA 141 for its low-income constituents, ratepayers of all these smaller utility companies, by addressing the clear order of the Commission which requires that these smaller utility companies be "in full compliance" with PA 141 and the Commission's order in U-12464. At that time, MCAAA indicated, as now, that these smaller utility companies' restructuring filings may be doing more than simply "unbundling existing

rates" and seeking recovery of additional costs through these cases. Some smaller utility companies' initial filings indicate that such is the case whereby Wisconsin Electric Power Company ("WEPCo"), for example, is seeking to seek implementation costs from all ratepayers rather than from only those that would seek to obtain service through retain open access tariffs. In addition, Indiana Michigan Power Company ("I&M") appears to seek recovery of certain regulatory assets and transition costs as well as special accounting treatment in these cases.

9. On December 20, 2000, Staff indicated that the companies' filings were incomplete but that subsequent filings in June, 2001, might clarify some open issues. In the interim, these companies have filed their testimony on February 20, 2001, which again may not fully comply with the Commission's U-12464 order or PA 141. In effect, these smaller utility companies are not merely seeking to unbundle existing rates, as Staff would have the ALJ believe. On December 20, 2000, the ALJ drew a line around the scope of these hearings so as to exclude review of PSCR clauses or power supply arrangements or to set rates in a traditional sense (2 TR 87-88). The ALJ further stated that it is within the scope of review of this case to review issues envisioned by Public Act 141.

10. Further, as directed by the ALJ, MCAAA sought the "other remedies available" in other cases involving these smaller companies' Act 304 cases. In those cases, the Staff and incumbent utility company moved successfully to strike MCAAA's testimony and exhibits associated with energy efficiency issues.[2] I&M has a suspended PSCR clause and has not been required to file a current PSCR case at the Commission. MCAAA anticipates filing the testimony

[2]The PSCR plan cases of Wisconsin Public Service Corporation's ("WPSCorp") case, U-12613; Northern States Power Company - Wisconsin's ("NSP-W") case U-12614; and Wisconsin Electric Power Company's ("WEPCo") case, U-12615.

and exhibits or Mr. Crandall in WEPCo's current general rate case (U-12725). While such testimony is also clearly relevant in WEPCo's general rate case, the Commission may issue an order in that case requiring WEPCo to provide funds for the LI/EE Fund based upon PA 141, thus precluding the contributions of other smaller utility companies to that fund unless the issue is addressed here.. These consolidated cases are thus an appropriate forum within which to address issues associated with energy efficiency and the LI/EE Fund.

11. Moreover, as the scope of these cases extends to the "unbundling of existing rates," several of these smaller utility companies or affiliates are already collecting and have collected substantial amounts for energy efficiency and conservation in existing rates. For example, MCAAA believes that NSP-W, WEPCo and WPSCorp have been collecting from ratepayers in Wisconsin and Michigan a total of $3.9 million for low-income weatherization, $27.4 million for energy efficiency and conservation programs, and $4.46 million for low-income uncollectibles. A substantial portion of these, sums are being collected from Michigan ratepayers. Yet, to the best of MCAAA's knowledge, such monies are **not** being used by these smaller utilities to provide low-income, weatherization or energy efficiency and conservation programs in Michigan. Thus, such monies are collected and going unspent in Michigan to the detriment of all Michigan ratepayers. To the extent that PA 141 establishes an LI/EE fund and that MCAAA's Testimony and Exhibits of Geoffrey C. Crandall address such a fund including alternatives for the Commission's review in allocating monies for such a fund, intervenors' testimony is relevant. Since these smaller utility companies are already collecting such funds in rates, this issue is directly within the scope of PA 141 and this proceeding.

12. MCAAA's testimony and exhibits fall squarely within the scope of PA 141. PA 141 requires the Commission to establish an LI/EE Fund and the rules for its administration. In addition, the Commission in U-12464 compels the smaller utilities to file restructuring plans in "compliance with the Act." This can only mean that these smaller utility companies must comply with all provisions of PA 141 and are not permitted to pick and choose, or exclude except where PA 141 expressly allows such a choice. Thus, compliance means **full compliance and not just a selection of those issues which either Staff or the smaller utility companies may wish to present to the Commission.**

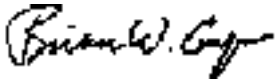
13. For its part, the Commission can choose where it addresses issues associated with the LI/EE Fund. In addition, it is within the discretion of the Commission to establish a forum wherein parties may address how the Commission will administer such an LI/EE Fund. However, to date, there is no other forum which addresses these LI/EE issues. The Commission has already addressed some issues associated with the LI/EE in DECo's and CECo's securitization cases, U-12478 and U-12505, respectively. While DECo had also filed an application for ratemaking treatment associated with LI/EE and other matters in U-12595, the Commission suggested that DECo withdraw its application pending further developments associated with the LI/EE. Nonetheless, PA 141 establishes a fund and requires the Commission to administer such a fund. This PA 141 implementation case is the only, and proper, current forum the Commission has available to address such issues. If Staff or the smaller utilities wish to address these issues, as they must under PA 141, the schedule in this case permits them to do so. The utilities are scheduled to file their final tariffs, rates and conditions of service along with their supporting testimony on June 5, 2001.

WHEREFORE, MCAAA respectfully requests the ALJ to deny Staff's Motion to Strike the Testimony and Exhibits of Geoffrey C. Crandall.

Respectfully submitted,

MICHIGAN ENVIRONMENTAL COUNCIL and
the PUBLIC INTEREST RESEARCH GROUP
IN MICHIGAN

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



Brian W. Coyer (P40809)
Knaggs, Harter, Brake & Schneider, P.C.
1375 South Washington Avenue, Suite 300
Lansing, Michigan 48910
517-482-1659/FAX 517-482-2689

DATED: March 30, 2001

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

I, Brian W. Coyer, being duly sworn, depose and say that on March 30, 2001, I served a copy of Michigan Community Action Agency Association's Response to MPSC Staff's Motion to Strike the Testimony and Exhibits of Geoffrey C. Crandall upon:

Sherri A. Wellman
Loomis, Ewert, et al.
232 South Capitol Avenue, Suite 1000
Lansing, Michigan 48933

Roderick S. Coy
Clark Hill, PLC
2455 Woodlake Circle
Okemos, Michigan 48864

David Gadaleto
Assistant Attorney General
6545 Mercantile Way #15
Lansing, Michigan 48911

Brian W. Coyer
Knaggs, Harter, Brake & Schneider
1375 S. Washington Ave., Ste. 300
Lansing, Michigan 48910

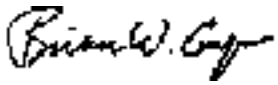
Christine M. Soneral
Dykema Gossett PLLC
800 Michigan National Tower
Lansing, Michigan 48933

Larry G. Watterworth
Assistant Attorney General
6545 Mercantile Way #15
Lansing, Michigan 48911

Richard J. Aaron
Honigman, Miller, Schwartz
222 N Washington Square, Suite 400
Lansing, Michigan 48933-1800

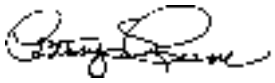
James D. Florip
Gillard, Bauer, Mazrum, Florip
109 East Chisholm
Alpena, Michigan 49707

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



Brian W. Coyer

Subscribed and sworn to before me
this 30th day of March, 2001.



Betsy L. Reeve, Notary Public
Eaton County, Michigan Acting in Ingham County, Michigan
My Commission Expires: November 24, 2003