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 for approval of its plan for implementation of 2000 PA 141. _____/	Case No. U-12650
In the matter of the application of NORTHERN STATES POWER COMPANY-WISCONSIN, d/b/a XCEL ENERGY, for approval of its plan for implementation of 2000 PA 141. _____/	Case No. U-12651
In the matter of the application of AEP/INDIANA MICHIGAN POWER COMPANY 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
	HEARING ON MOTION

Proceedings had in the above-entitled matters before Daniel E. Nickerson, Jr., Administrative Law Judge, at the Michigan Public Service Commission, 6545 Mercantile Way, Lansing, Michigan.

SESSION OF WEDNESDAY, APRIL 4, 2001

VOLUME 3

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Wednesday, April 4, 2001

1:30 p.m.

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(The hearing was resumed pursuant to adjournment.)

JUDGE NICKERSON: On the record, continuing in the consolidated matters involving Docket Nos. U-12649, 12650, 12651, 12652 and 12655. We're here this afternoon on a motion filed by the Michigan Public Service Commission Staff.

My name is Daniel Nickerson. I'm an Administrative Law Judge with the Bureau of Hearings assigned in this matter.

Let's take appearances of counsel for the record, please.

MR. AARON: Good afternoon, your Honor. Richard J. Aaron, of Honigman, Miller, Schwartz & Cohn, appearing on behalf of Indiana Michigan Power Company, doing business as American Electric Power.

MS. WELLMAN: Sherri A. Wellman and Harvey J. Messing on behalf of Wisconsin Electric Power Company, Edison Sault Electric Company, Wisconsin Public Service Corporation, Upper Peninsula Power Company, and Northern States Power Company-Wisconsin.

MR. COYER: Good afternoon, your Honor. Brian W. Coyer on behalf of the Michigan Community Action Agency Association, with the law firm of Knaggs, Harter, Brake & Schneider.

MR. KESKEY: Don Keskey, law firm of Knaggs, Harter, Brake & Schneider, on behalf of the Michigan Environmental Council and the Public Interest Research Group in Michigan.

MR. WATTERWORTH: Good afternoon, your Honor. My name is Larry G. Watterworth, Assistant Attorney General, appearing on behalf of the Michigan Public Service Commission Staff.

JUDGE NICKERSON: All right. Thank you for your appearances.

I have received and reviewed the motion filed by the Staff. In addition, I have received and reviewed the responses in opposition filed by the Michigan Community Action Agency and the Michigan Environmental Council and the Public Interest Research Group, as well as responses in support of the motion filed by Indiana Michigan, Wisconsin Electric Power Company, and Edison Sault Electric Company, Wisconsin Public Service Corporation, and Upper Peninsula Power Company and Northern States Power Company-Wisconsin.

All right. Mr. Watterworth, your motion,

sir. Please proceed.

MR. WATTERWORTH: Thank you, your Honor.

Before we filed this motion the Staff looked at the manner in which these cases were set up, and the first thing we did was we went to Case No. U-12646, which is entitled in the matter, on the Commission's own motion, of the implementation of 2000 PA 141. This was the order that set up these cases, and then in each case there was a notice of hearing issued.

In the order that set up these cases the Commission cited 10a of PA 141, and basically the relevant paragraph in that order indicates "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 providers to choose an alternative electric supplier."

That language was the same language that was put in the notices in each of these five dockets, and as you know, they have been consolidated for purposes of efficiency, and during the hearing on the motion to consolidate there were some comments made regarding the scope of the hearing and some of the parties expressed some concern as to what the scope of the hearing was, and you indicated at pages 87 and 88 of the transcript relating to this case, and I quote:

"Act 141 involves the unbundling of existing rates in June of 2001. The implementation of terms and conditions of service to allow utility's retail customers to choose an alternative electric supplier by January 1, 2002."

You went on to say:

"They do not involve rate setting in a traditional sense. They do not involve setting fuel costs. They do not look behind power supply arrangements. And it does not determine the disposal of nuclear waste storage or high level nuclear waste disposal. Also, it does not involve securitization."

With those comments in mind, and with the original order that set up this case in mind, and the notices, Staff is of the opinion that this particular case has a narrow subject matter. That subject matter deals with the proposing of tariffs and the unbundling of rates to allow a customer to choose an alternative electric supplier.

Testimony was filed in this case by Mr. Kushler, and at paragraph 6 of my motion, page 5, we looked at that testimony and the exhibits, and the testimony indicates that it's intended to provide information in support of establishing tariffs which include funding support for new energy efficiency

programs.

Based on the original order setting up these cases, the notice of hearing and your comments, and Staff's understanding of what this case involves, we do not believe that the testimony of Mr. Kushler falls within the parameters of the narrow scope of this case, so we would move to strike that testimony and his exhibits.

With regard to Mr. Crandall on page 5 of my motion, his testimony discusses the provisions of electric energy efficiency and load management, formerly DSM. Again, we do not believe that this testimony falls within the scope of the case, i.e., setting tariffs and unbundling of rates to allow a customer to choose an alternative electric supplier.

Mr. Callen's testimony. We found that testimony primarily concerns nuclear waste, spent nuclear fuel issues, and we do not believe that testimony belongs in this case, with the exceptions of a few narrow portions of his testimony.

We believe that all of Mr. Crandall's testimony and exhibits should be stricken. With regard to Mr. Callen, as indicated in our motion, we think most of his testimony as detailed in the motion and most of his exhibits aren't relevant to the issues of this case and that they should be stricken.

The intervenors seem to think because Act 141 covers a lot of issues, that they can pick and interject those issues in this case. We think, based on the order that set up these hearings, based on the notice of hearing that was issued, and based on your comments, that the door isn't wide open to bringing in any issue that might be in 141. If there's issues that they think need to be addressed, they can certainly file something with the Commission and seek that a docket be opened. I think there's other cases that are ongoing that also have these issues that they're involved in, and we want to keep -- we think this case should be kept on a narrow road only involving the revision of tariffs which allow someone to choose an alternative electric supplier and the unbundling of rates.

I have nothing further. Thank you. And I would rely on my motion as filed.

JUDGE NICKERSON: Thank you, Mr. Watterworth.

All right. Let's take the responses in support first. Mr. Aaron or Ms. Wellman?

MR. AARON: I think Ms. Wellman indicates she wanted me to go first. I'll do that reluctantly because I'll probably step on her toes. I'll try not to.

And I would echo the comments of Mr.

Watterworth, and I'll try not to repeat them, but I think the Staff's motion raises a fundamental question: What are these cases about? And I think the issue's been addressed at least three times in this case already. Mr. Watterworth alluded to the June 19th order in Case No. U-12646, but I think that issue has been addressed in the notice of hearing that Mr. Watterworth discussed and in your ruling on the petitions to intervene.

But rather than conform to those indications, I think the prefiled testimony that we're talking about here and the exhibits disregard the clear indication of what the nature of this case is about.

Let me refer back to the order, the June 19th order. The June 19th order specifically identifies two sections of Act 141. That's Section 10a and 10x. No other sections are referenced in that order of Act 141, and the Commission directs the electric utilities to file plans to implement these provisions, and that direction is literally in the order. It says, "to implement these provisions of the Act," and it refers to Section 10a and 10x, each investor-owned utility other than Consumers and Detroit Edison shall file no later than October a restructuring plan.

Now, what's that plan supposed to address? It's supposed to address those two provisions of Act 141,

and those two provisions talk about providing customers of an electric utility an ability to choose alternative electric suppliers.

We raised a concern and you heard in the petitions to intervene because the petitioners in this case sought to address in their petitions a whole panoply of issues that may stem from Act 141, and they refer to sections in their responses here as justifying addressing energy efficiency and low income protection funding and things like that, Section 10d(6), Section 10s, and Section 10t of Act 141.

Well, I admit those are in that Act, but we're not here to address those sections. That's not what the Commission's order talked about, that's not what the notice of hearing invited, and that's what we had an argument about and that's what you ruled on. You said these cases involve implementation and unbundling the tariffs to implement the concept of letting customers choose an electric supplier. Dealing with energy efficiency, low income protection, DSM, and a lot of the issues identified in witness Callen's testimony don't have anything to do with that. These are new proposals. They're things that these intervening parties would love to address and I think you even recognized there are appropriate forums for them to do it but not in the

context of this case.

And to bring back my point, you even recognized specific remedies available to them with regard to a lot of these issues, and at page 88 of your ruling you said:

"When I read the petitions to intervene filed by MCAAA, MEC and PIRGM, a red flag also went up to me that they are seeking to raise all sorts of issues which I don't think are issues ... envisioned by Public Act 141. There's other remedies available to those associations. Staff cites them at page 3 of its brief."

Further, you go on in your concluding when you grant their petitions to intervene, and I think that it's important to bring up, you state:

"...for those reasons, I'm going to allow them to -- the petitions. I'm going to grant the petitions. But I can't say this ... strongly enough ... that I view this as not involving all of the things I've identified earlier. ... I think I said it earlier that this is a snapshot of where existing rates are at a particular time.

"The rates are what they are." And you go on to explain clearly the scope of this case doesn't envision all of the issues that they had in their original petitions that we have back here again in the prefiled

testimony and exhibits that are subject to the motion to strike.

The notice of hearing does not expand the scope of this case. The notice of hearing, if you look at it, just simply says the Commission may approve the implementation plan, and in my case filed by AEP/I&M pursuant to the Commission's order, that's all it says. It doesn't say we can expand the scope of this case or go beyond the relief requested by the utility.

Now, the intervenors suggest that the motion to dismiss is premature, and I don't think it's premature at all. I think a motion is timely unless we have established a particular time frame. I think it's particularly relevant in this case because we have now an opportunity to address their testimony, and we have an obligation, if this testimony is relevant, to address it. But if it's irrelevant, we don't need to go to the cost and expense and time of addressing it. And I think from that standpoint it is particularly timely, because we have a filing coming up that does not need to address irrelevant evidence, and based on the scope of the case, this evidence is irrelevant.

The intervenors suggest that the Staff's motion should be rejected because it fails to recognize that the proceeding could be considered legislative,

namely, to implement Act 141. Again, I don't think that the Commission's order can be construed that broadly. While the Commission has an obligation to implement Act 141, simply because a section in Act 141 appears to address energy efficiency or something like that doesn't mean we're going to address it in this case.

If you take the argument to its logical extreme -- if the discussion appears in Act 141, they could bring it in -- then an absurd result is created. Simply consider this: Act 304 implements GCR cases, permits implementation in GCR cases and PSCR cases. Taking their logical argument to the extreme, it means that they would be able to introduce gas cost issues in PSCR cases simply because gas cost issues appear in Act 304.

That's not a logical argument. In fact, that's absurd. You would end up with a certain result, and it would be absurd in this case to expand the scope of this case beyond what the Commission had already established in its order.

Just a couple more points. In paragraph 7 of MEC's response, and I believe it appears in MCAAA's response as well, they assert that the Staff states that the receipt of the intervenor evidence will cause unnecessary extra work for all parties and will delay the

proceeding, and that this is wholly unexplained.

Well, I think it's pretty evident that if we have to address to rebut this evidence, that there is a tremendous amount of work for the utilities and a tremendous amount of work in terms of doing discovery, in terms of preparing evidence to rebut it, and preparing for cross-examination of these witnesses, and none of this is necessary if the evidence is deemed to be irrelevant.

And I'm sure that some point in time, because I've heard these arguments before, you may hear an argument something to the effect, "Well, let it in for what it's worth," and again, that doesn't obviate the burden that's placed on us. If it's irrelevant we shouldn't have to address it, and we're asking you to rule that it's irrelevant today.

I guess I'd like to conclude with a comment on paragraph 10 of MEC's response, where they say that Staff is arguing erroneously because the case inherently includes the issues raised in Act 141, and that there's no legal requirement that intervenors pursue another docket which does not exist or to file a new docket to pursue these issues.

Well, I would submit, your Honor, there is a legal requirement, and that legal requirement is the legitimate scope of this case. Simply because they desire

and they think this is a reasonable place to park these issues and have them addressed by the Commission doesn't mean that they can legitimately expand the scope of this case that has been established by the Commission's order originating these proceedings.

It's simply a specious claim to say that somehow there's no legal requirement. Well, in fact, there is, and that is the legitimate scope of this case. The legal requirement is what's relevant to the scope of those issues.

Finally, your Honor, in the responses there was an equity argument made by the intervenors that Staff didn't try to strike extraneous material that the companies had filed. Well, I would submit, your Honor, one of the reasons they didn't is because everything that the companies have filed so far has a logical and reasonable relevance from an outgrowth of implementing Sections 10a and 10x of Act 141. They're relevant, the issues raised.

For example, implementation costs. Identifying the costs makes sense when the Act permits recovery of costs necessary to implement the restructuring that would permit a customer to choose an electric supplier that's an alternative to the incumbent electric utility. There's a logical nexus between the two.

You can't make that same claim with respect to the issues that the intervenors are trying to interject. There's no logical connection between the two of permitting a customer to choose an alternative electric supplier. That's what we're here to talk about.

So finally, there's no violation of any rights in striking irrelevant evidence, and there are no violations of any rights to strike evidence that supports irrelevant positions, and, your Honor, it is vitally important to the scope of this case to grant Staff's motion, and we'd request that you do it.

Thank you.

JUDGE NICKERSON: Thank you, Mr. Aaron.

Ms. Wellman?

MS. WELLMAN: Thank you, your Honor.

It's pretty much been said by Mr. Aaron and Mr. Watterworth, but I have a few things to say.

I'd like to emphasize to your Honor that this proceeding is not meant to address every possible issue that might arise out of Act 141. This case is limited to the establishment of the terms and conditions for allowing customers to choose alternative electric suppliers, and it is limited to looking at and unbundling existing rates.

Both MEC and MCAAA have submitted testimony

and exhibits that are irrelevant to the scope and purpose of this proceeding. None of the testimony submitted by MEC and MCAAA, especially that relating to the social and low income DSM programs, or the alleged problems associated with and suggested remedies for spent nuclear fuel disposal, have anything to do with establishing tariff conditions that allow customers choice.

Additionally, frankly I'm shocked by MEC and MCAAA with their allegations that NSP's and Wisconsin Electric's and Wisconsin Corp's Michigan rates include costs associated with DSM programs administered in Wisconsin. Mr. Keskey should know, of all people, that these companies' rates are set on a jurisdictional basis. Costs are allocated on the basis of the cost of serving Michigan customers.

I have been assured by each of these companies that the Michigan ratepayers do not pay for DSM programs administered in Wisconsin, and if MEC or MCAAA have proof that that is the case, that the companies are collecting monies in Michigan to subsidize DSM programs administered in Wisconsin, it would appear that this is a ratemaking issue and it can be addressed via a complaint proceeding.

Further, their suggestions relating to the establishment of DSM programs have nothing to do with

unbundling existing rates. Their suggestions would require the Commission to establish new currently non-existing social local low income programs that are wholly unrelated to the establishment of choice.

Further, MCAAA claims that its testimony is relevant to Act 141 because of the low income and energy efficiency fund as recognized in Act 141, Section 10d(6). I would submit to your Honor that that particular section of the Act relates to utilizing securitization savings to fund that program or to fund that fund, and none of the parties or the utilities in this case are seeking securitization at this time.

Additionally, MEC and MCAAA also argue that DSM issues have been found to be irrelevant in PSCR proceedings, so gee, this must be the only logical forum to address them, and this is untrue. As Mr. Aaron pointed out, there are other proceedings, other places that those DSM programs can be addressed, and there is no legal requirement that they have to initiate the program in some other proceeding. I think that they're allowed to do so on their own.

Also, MEC appears to think that it's entitled to raise issues in this proceeding relating to alleged problems associated with spent nuclear fuel. As I pointed out to your Honor, these very same issues have

been raised in the PSCR proceedings, and as indicated in my response, Mr. Crandall is testifying in two of the cases on the exact same issues, making the exact same recommendations, and I don't think that we should have to address those issues in this proceeding, particularly when, your Honor, I'm anticipating orders in those cases to be issued probably mid-June or July. It would be a waste of our time and money to again respond to those issues.

MR. WATTERWORTH: Could I interject? I think you said Mr. Crandall was testifying on nuclear waste. Did you mean Mr. Callen?

MS. WELLMAN: Mr. Callen. Excuse me.

MR. WATTERWORTH: Thank you.

MS. WELLMAN: And then further, none of that testimony as submitted by MEC serves as appropriate background for developing any positions that relate to the unbundling of existing rates.

And this is also again to re-emphasize what Mr. Aaron said: The MEC/MCAAA allege that their irrelevant testimony should be admitted because some of the initial plan filings included requests for recovery which may be irrelevant to this proceeding. As observed by Mr. Aaron, none of the companies to date have filed testimony or exhibits that are irrelevant to this

proceeding, and I think if they did, it's always possible that motions to strike would be filed in relation to that.

Therefore, the companies as I represent them support Staff's motion to strike and request that your Honor grant the motions.

Thank you.

JUDGE NICKERSON: All right. Thank you, Ms. Wellman.

All right, gentlemen. Mr. Coyer or Mr. Keskey?

MR. COYER: Your Honor, I'll go first.

I'd like to outline first of all the answer of MCAAA generally to the motion to strike and the responses from the various utilities.

The first point is very simply that the Commission has said these cases are about compliance with PA 141. Both Staff and the company seem to rely on the June 19, 2000 order in U-12464 and the notices of hearing in these cases, but that order simply says "in compliance with Act 141."

The reference in the argument that's been made by the companies in this respect says that 12464 cites only two parts of 141; that it only cites the provisions in 10a and 10x. However, those two provisions in that opinion and order are there because these set time

requirements within which the Commission must issue orders concerning compliance with Act 141.

Other utility companies, the large utility companies in our state, Edison and Consumers, have through a series of cases complied with Act 141. However, these cases for these utility companies remain and these cases must be resolved in a timely way so that the Commission can issue an order by 2002, or at least before that time, so these companies can comply with Act 141.

There is no bar in this order, that is, the order in 12464, or in the notices of hearing that these cases cannot consider issues that are relevant under Act 141. It doesn't limit it merely to these two provisions. Again, these two provisions relate simply to a matter of timing.

If one then takes that as the direction, it's quite clear what the scope of this case is going to be, and this is in full consequence and full awareness of the order that you issued and rulings you issued on December 20, 2000, which I'll address in just a moment.

The duties are clear, the Public Service Commission and the companies must address the issues that comply with Act 141. Again, no party has said -- and I will say this for the first time -- that no party has said that PA 141 does not establish a low income and energy

efficiency fund. Nor does any party state the fairly obvious conclusion that this is not to be administered by the Commission and that the Commission is not to establish standards for purposes of administering the fund. This is clearly identified in the statute.

As a matter of fact, then, as a consequence there's an immediacy and an urgency to deal with the issues that MCAAA and other parties, MEC, is prepared to give to this case and bring to this case.

And in making that general argument, I'd like to now address some of the mistakes or errors if I can, perhaps misjudgments on the part of either companies in their support for the Staff's motion.

First of all, they ignore the clear language of the enabling part of the statute, PA 141, which says that energy conservation is to be within the scope of PA 141. They ignore the title, which says that PA 141 creates a fund. And furthermore, if one took the reading of the statute and the reading of this particular order 12464 and the notices of hearing as they literally would like you to take it, it would mean that no other issue other than those issues that are raised by those two provisions in the statute could be raised here. And I'll address that issue in just a moment.

Furthermore, Mr. Aaron said that low income

and energy efficiency and conservation stem from PA 141. Not so. PA 141 expressly includes a low income and energy efficiency fund, not exclusively for Detroit Edison, not exclusively for Consumers Energy, but for Michigan. By clear implication every utility company in the state of Michigan is involved, and every utility company in the state of Michigan, electric company, would be required under this statute to make some provision for low income and energy efficiency funding.

Now, Mr. Aaron also made a further error, in my judgment at least, your Honor, that somehow or another because of that provision in Act 141, those two provisions that he cites, these cases can't go beyond the scope of the applications that are filed by the company. He said you can't go beyond the scope of relief that's requested in the applications of these companies. Well, if that were the case, the companies could pick and choose on the issues that they wished to present. Act 141 and compliance with it would be ignored.

Mr. Aaron also made a rather interesting comment about an absurd result that could be a consequence of this whereas gas cost issues would otherwise by implication be raised in an Act 304 case or a PSCR case. This is by analogy. Mr. Aaron knows well that gas costs are clearly relevant to the generation of electricity and

as appropriate can be raised in an Act 304 case. So I'm not sure exactly where he intended that analogy to go.

Now, to get back to what Act 141 says, keeping in mind that the Commission said these cases were to address compliance with Act 141. They did not say, the Commission did not say in addition to that, that these cases were only to address, quote, unbundling of existing rates. If that were the case, much of the relief the companies are asking for here, and have not yet made explicit and yet will ask for in their June 5, 2001 filings, would otherwise be irrelevant to this case.

Just to make a list -- and I don't want to belabor the record with this -- Act 141 permits these companies and requires these companies to address recovery and reconciliation of stranded costs. In other cases the Commission is considering, it requires them to address licensing, code of conduct. In an issue not addressed in this case, it requires them to address a renewable energy program. It requires them to address self-service power generation. They are seeking recovery of implementation and administration costs in addition to the unbundling of existing rates, further demonstration that they're not really sticking to what they say the scope of this case is likely to be or should be.

Moreover, the statute establishes and sets

for the Commission to administer a funding for low income and energy efficiency very clearly in 10d(5) and 10d(6). Moreover, the statute addresses standards for the use of the fund, particularly with respect to shutoff and other protection for low income customers, and to promote energy efficiency by all customers. There are other various provisions for low income shutoffs in PA 141.

PA 141 also addresses the requirement for these utility companies that they either join a FERC-approved RTO or an ISO, or that there would be a divestiture of transmission assets. Again, these issues might be addressed in other cases. If they are, fine.

However, in these as yet incomplete filings from these companies, and acknowledged to be incomplete, WEPCo and NSP and maybe others are seeking to recover implementation and administrative costs from all customers, not just from those who are going to be seeking retail open access. They're also going to seek to recover Choice education costs from all customers, granted, an issue that's in U-12333 on remand.

I&M/AEP identifies generally a series of costs -- and this is at pages 64 through 89 of its initial filing, its October 2, 2000 filing -- identifying a series of costs it reserves the right to recover or regulatory assets for eventual recovery in rates as part of its June

5, 2001 filing yet to be filed in which it promises, quote, further refinement. And there are a number of costs involved in that. There are about nine of them that the company has mentioned in this October 2 filing, and once again reiterates in its later filing.

This should be kept in mind also at this point: that these companies have yet another filing to make, which comes up in June, to which they can respond to issues that are being raised which are relevant issues in this case.

Now, it was suggested by counsel for NSP and several of the other Wisconsin companies that somehow this case, because it doesn't involve securitization, somehow should not address the low income and energy efficiency fund. Well, the securitization cases arise for Edison and Consumers, as you know, because Edison and Consumers opted to securitize, and these companies have not. Though they could have opted to securitize under the statute, they did not.

But that does not exclude consideration of the low income and energy efficiency fund, but rather invites the parties, because the Commission is required to administer, and because the statute sets forth and establishes the fund, a mechanism for providing funding for the low income and energy efficiency fund.

To go back to the Edison case -- this is 12478 -- the MPSC established the fund and stated, "Remaining excess savings shall be designated for use in funding the low income and energy efficiency fund up to the limits established by statute."

Now, the Commission issued its order in this case -- that is, the DECo case 12478 -- and since that time the Attorney General, perhaps other parties, had appealed that to the Court of Appeals. Of course, that would stay the relief that Edison would be seeking for securitization. Since that time, however, all appeals to the Court of Appeals have been withdrawn. The Public Service Commission now is free to, and must under law, begin to establish and administer this fund.

And so we're talking about a situation in which this fund will come into physical existence for accounting purposes as well, monies be allocated for it from the securitization savings, and yet no rules with respect to these smaller utility companies as to how customers in those service areas and programs that would address those service areas' needs are yet to be administered. This is a case in which that can occur.

The MPSC and these companies must now address how to generate funding for the low income and energy efficiency fund to be in compliance with PA 141.

As I have pointed out, and I'll reiterate, that fund is established. It is irrelevant that these companies, that is, these smaller utility companies, are not opting to securitize assets for purposes of generating monies for the fund. It is probably unlawful, and certainly unfair, for only Edison's securitization funds to generate a balance for the low income and energy efficiency fund.

We argue that it's within the MPSC's general authority to order a mechanism for generating revenue for the low income and energy efficiency fund in these cases for the small utility companies.

Thus, addressing low income and energy efficiency issues in this case is relevant to be in compliance with PA 141, which is consistent with the June 19, 2000 order in U-12464, it's consistent with the notices of hearing in these cases, and it is also consistent with your rulings of December 20, 2000 that have been referred to by Staff.

Your ruling uses this language. It requires that issues that are, quote, envisioned by PA 141, close quote, are in the scope of this case. And let me address some of the points that have been made by Staff and the companies with respect to what you said specifically.

You said there are numerous issues to be

addressed in this case, and you said these proceedings are defined by 141. You said they do not involve setting fuel costs, they do not look beyond power supply arrangements, and that there are other remedies available. All of this has been cited to you previously.

Well, first of all, MCAAA's testimony, which we probably should address here as part of our response, is within Act 141, as has been demonstrated.

Secondly, it does not involve fuel costs. It involves DSM and energy efficiency otherwise to be funded by a statutorily established low income and energy efficiency fund to be administered by the Commission. We don't look behind power supply arrangements, and, of course, with respect to other remedies that might be available, that has to be addressed as well.

Staff's brief in response to MCAAA's petition to intervene does mention some cases, and you in your ruling of December 20, 2000 also mention a number of dockets. And let me review some of those dockets and the status of those dockets at this point.

With respect to the Choice Advisory collaborative, that addressed the issue of customer education, not compliance or administration of the low income and energy efficiency fund. Compliance with respect to the order in 12333 means the parties are asked

now to consider some funding mechanism for customer education.

Now, as you've already heard, administrative law judges in Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and NSP-W's PSCR cases have not admitted Mr. Crandall's testimony on the low income and the energy efficiency and PSCR costs. MCAAA believes that those are directly linked by law. We believe those rulings are wrong, but those rulings stand at this point and are pending at the Commission.

WEPCo has also filed a general rate increase case, 12725, where MCAAA anticipates filing testimony on WEPCo's energy efficiency and load management programs, which likely should be and will be relevant in that case. However, WEPCo's case is the only rate case other than the Upper Peninsula Power case that I'm aware of in which this issue could otherwise be addressed.

Further, although Staff says and the companies say that we should be filing another case, it's clearly within the prerogative of the Staff, and certainly the obligation and duty of the company in compliance with PA 141, to address these issues or to file a case with respect to low income and energy efficiency so that that fund can be in place by the time the statute requires it to be so.

Somehow Staff and the companies say that it's MCAAA's responsibility to create another docket to address this issue. But all the parties are here in this case. The Staff is here, all the smaller utility companies are here. It's within compliance with PA 141 and we're prepared to address the issue. The schedule in this case permits the companies to address these issues.

And I might add, your Honor, that in the I&M response to this, which is a positive response in support of Staff's motion in this case, there's a recognition that perhaps some of the AEP's companies are engaging in low income and energy efficiency-related activities, and also that the other companies here, by their own admission, have engaged in low income and energy efficiency activities or energy efficiency and load management activities in their own jurisdictions and know full well how to do this. There is not any lack of expertise on the part of these companies or the Staff to address this question.

Now, finally I would argue, MCAAA would argue, that Mr. Crandall's testimony is clearly relevant within that reading of PA 141 and the Commission's order, which said that the companies were to file in compliance with 141. Nor does Mr. Crandall's testimony dissemble existing rates, but rather asks the Commission to find an

appropriate funding mechanism for a fund that it has already established and has been established by statute.

Your Honor, there are some further errors with respect to the arguments that have been made by the company, particularly by NSP-W. Somehow there's an allusion to, quote, social programs, somehow suggesting that these are somehow not cost-effective programs that MCAAA would be proposing as part of the low income and energy efficiency administration.

Nothing could be further from the case. In fact, the overwhelming evidence in the state of Michigan, when presented in this case or other cases, will show that DSM and energy efficiency conservation and load management activities are cost-effective. While it could be just suggested as an error, it clearly attempts to set a tone that would otherwise be inappropriate in a discussion about something that is otherwise statutorily required.

Your Honor, I would request that you respectfully deny the motion to strike, and if that is not your ruling, to give me an opportunity to ask for further relief.

JUDGE NICKERSON: Thank you, Mr. Coyer.

Mr. Keskey.

MR. KESKEY: Thank you, your Honor.

The MEC and PIRGIM filed the testimony of

two witnesses, witness Kushler relative to energy efficiency, and witness Callen relative to nuclear plant and nuclear waste issues. The testimony was filed in good faith in an effort to comply with the Act 141 implementation, the Commission's June 19, 2000 order in U-12464, the Commission's notice of hearing, and your Honor's rulings relative to various hearings held during prehearing and on objections to interventions.

Let me discuss first witness Kushler's testimony. His testimony was filed essentially as a coordinated complementary approach to that of witness Crandall. The purpose of the parties, the intervenors in this case, has been to coordinate their support for these issues involving energy efficiency and conservation.

In that role Mr. Kushler took more of the big picture or policy approach as pointing out the benefits of energy efficiency, the broad public support in Michigan for energy efficiency approaches, and the fact that even on a national basis where states have implemented electric restructuring that a majority or a vast majority of the states have incorporated important energy efficiency concepts into their legislation.

And our own legislature has discussed energy efficiency policies not only in Section 10d, but also in Section -- I believe it's Section 10s. They've

also shown a concern for low income customers and low income protection in those same provisions and in also Section 10t, among other provisions.

The legislature in Act 141 also focused largely on the two largest utilities, Consumers Energy and Detroit Edison, and then indicated the Commission should implement similar restructuring for the smaller utilities and thereby gave the Commission considerable discretion throughout the statute to implement electric restructuring even pursuant to orders that it had already issued. So, your Honor, you can take these legislative policies and the Commission can apply them using its widespread discretion in these cases.

Now, looking again at witness Kushler specifically, first of all, his testimony is filed at this stage -- this is an early part of the schedule in this case -- to provide reasons why the Commission should focus on these issues of broad policies that support it in an attempt to persuade the Commission to look at the specific scope of this case and apply it where it can.

We point out that we believe these companies in large part are expending funds for energy efficiency programs in other states, and in fact, these are in the rates, the current rates. Wisconsin Electric, Northern States Power, and Wisconsin Public Service, who

have service territories in Wisconsin and in part in Minnesota, have substantial programs. They incur costs to administer the programs. The MCAAA has provided offers of proof indicating even from the Web sites the different kinds of programs it has.

The testimony in the PSCR cases also establishes that these utilities dispatch their system on a centralized basis and spread the costs uniformly according to common formulas across all of the ratepayers within both Wisconsin and Minnesota -- or, excuse me -- Wisconsin and Michigan.

So the point, your Honor, is that yes, each commission regulates in their own states, but the costs are allocated on a common basis across the states, and those costs include the costs that these utilities are incurring in these programs.

The benefits of these programs are received by people in Wisconsin. As far as we can tell, the benefits of these programs are not received in Michigan. As far as we can tell, we are not aware of any credit to any rates where Michigan ratepayers are credited for the costs that are being expended for these programs but for which Michigan ratepayers are receiving no benefit.

So now that raises a tariff issue. Should there be credits or should there be some kind of provision

in the tariffs to deal with the costs which are in present rates and implementation of these concepts in Michigan, one or the other, and how can you break this down in the tariffs and how could you suggest provisions.

Well, your Honor, this is not the stage in the proceeding that you set that we are supposed to respond to the tariffs, because the utilities, as they admit in their filings, they are filing most of their material on June 5th, and then there's a period to respond to those. So then the parties will have to look at their June 5th filings and then respond and tailor them to the tariffs and the unbundling and the implementation of Act 141 in this case.

That's what we would attempt to do. This testimony is preliminary that's filed thus far, and it should be viewed that way, and we'd urge you not to rule striking any of it, particularly at this time, because it's premature.

So we would urge, your Honor, that you continue the schedule and that you go through the tariff filings and the responses, and then the rebuttal to the tariff filings, and that we provide this on the record, and that the briefing be dedicated to the record and that the Commission, which has to decide the policies of implementation under Act 141, be given the opportunity to

make these decisions.

I would also note one final thing with respect to witness Kushler's testimony. I&M Power filed a response supporting the Staff's motion on March 30th, and they make the statement on paragraph 4: "While existing rates have features to encourage customers to use energy efficiently, they do not reflect the concept supported by Mr. Kushler, and therefore Mr. Kushler's testimony cannot be part of a snapshot of existing rates in which unbundling takes place."

Your Honor, if the existing rates incorporate features of energy efficiency, then the unbundled rates should incorporate features of energy efficiency. If the existing rates have these costs, then the unbundled rates should reflect these costs or the programs or both.

I&M makes the same admission relative to witness Crandall's testimony in paragraph 5 of the motion, and as we already indicated, we believe the other utilities, not Alpena Power specifically, but the others have these costs in the rates. And so when we unbundle the rates we should deal with these issues. So therefore you should not strike the testimony of witness Kushler.

Now let me turn to the prefiled testimony of witness Callen regarding nuclear plant decommissioning

and nuclear waste and SNF storage, disposal, and federal fee costs.

The Staff, as supported by the company, or the utilities, are moving to strike only portions of Mr. Callen's testimony and exhibits. They see no problem and they admit that nuclear plant decommissioning is relevant to this proceeding.

Your Honor, nuclear plant decommissioning and the issues of spent nuclear fuel (SNF) storage, disposal, and federal fee costs are so intertwined and integral that they cannot be separated. The companies' decommissioning studies for nuclear plants deal with both subjects, both decommissioning and SNF costs. The existing rates collect from ratepayers all costs relative to not only nuclear plant decommissioning, but also the costs of SNF storage and the federal fee for eventual SNF disposal. The existing rates therefore collect for these costs.

Moreover, you cannot have decommissioning of a plant without addressing SNF storage and disposal costs. In fact, the decommissioning studies in some cases present varying and widely varying estimates for the SNF costs and for the cost of decommissioning a plant based on assumptions concerning when the federal government will start accepting SNF for disposal. The longer the SNF

stays on the plant site, the greater the decommissioning costs, the greater the costs of O&M that are in rates at the present time and for a longer period of time.

In fact, with respect to Indiana Michigan Power, the Commission in a 1996 order in U-11237 in fact granted I&M's application to put into the decommissioning fund a portion of the rates that have been collected from ratepayers for certain SNF costs, and particularly with respect to SNF federal fees collected for pre-1983 fuel. So in fact, there's even a partial merger of decommissioning funds and SNF federal fee funds.

Now, witness Callen's testimony is far different than what he filed in the PSCR cases for some of these utilities, Northern States Power, Wisconsin Electric, and Wisconsin Public Service Corporation. If you look at the testimony, it is substantially reworked. It attempts to address the effects of restructuring, but it tries to focus to the degree possible on tariff recommendations. All of his testimony and exhibits present some background, needed background, and foundational information to persuade the Commission as to why the Commission should face these issues when properly unbundling the rates for these costs.

It seems silly to try to strike testimony, because it's important foundation and important background

for your ultimate recommendations. Then you've got swiss cheese testimony. There's no need for that.

You find in witness Callen's testimony a good-faith effort to present some introduction, the purposes of his testimony, background information, the reasons why the Commission should face the issue, and then he directs it toward restructuring, tariff issues, and the like, and notes also that further filings are to be made in these cases.

Now, your Honor, I don't see why you have to go through the mental gymnastics at this stage of the proceeding to try to separate the difference between nuclear plant decommissioning costs, which are included in rates on the one hand, and SNF storage, disposal, and SNF federal fee costs, which are also included in rates. If you're going to deal with it for nuclear plant decommissioning, you're going to have to deal with it with the other. It's all one big related piece involving nuclear plants and deals with very similar costs and it deals with rates where this stuff is being collected, where these costs are being collected.

Your Honor, we've already noted it's very premature to make a ruling to strike at this stage. The utilities' filings are incomplete. They promised that the June 5th date is when they make their very important

filings. After that the schedule provides for the responsive filings by the parties.

Let me make a couple of points relative to comments made today.

Counsel Aaron for I&M Power indicates that the Commission's order of June 19th quotes only two provisions of Act 141. While that may be true, the Commission is in fact implementing Act 141 and it wants to do so on an appropriate basis, and therefore it should consider all relevant issues to that task.

My colleague, Mr. Coyer, points out if the case is so limited as I&M would argue, why is I&M including in its implementation plan, at least the partial plan that we have so far, costs of implementation or other requests for recovery of costs, and even possibly recovery for regulatory assets. And in a couple of implementation plans I believe there's even a reservation for the possible request for stranded costs at a later time. If separate dockets are required for that, your Honor, or, excuse me, if separate dockets are required for our requests which we are trying to focus relative to unbundling of rates and restructuring, then their requests for this other relief should be in separate dockets.

We have statements that the utilities should be saved from having to respond to these filings.

Your Honor, if it's relevant and if it's within the scope of the tasks to be accomplished under Act 141, there is no great burden in responding to the filings. They could admit that the costs are included in rates now, they can propose how they would provide for these costs in an unbundled restructured industry.

We don't want to assume, your Honor, that decommissioning funds will be adequate or that they will be protected so that nuclear waste in Michigan will be finally stored and disposed of properly. We don't want to assume that some entity that ends up owning this plant decades from now with that liability will have the resources. We don't want to assume, as the Staff does, that, oh, these costs will be recovered from whoever uses the nuclear energy. We don't want to assume that the SNF federal fee will be protected adequately in view of the federal default which has occurred since January 31, 1998.

There is no harm, in fact there is much benefit for the Commission to consider these issues in this docket even if the Commission should have the opportunity to examine it also in another docket. The two dockets will look at different aspects of an overall very important issue.

With respect to counsel Wellman's comments, she's indicated that the utilities should not have to

address every possible issue, presumably under Act 141. We are not asking for that. We are asking for addressing or reviewing the specific issues we present in our testimony, which will be further refined and focused upon as we move toward the actual filings of the utilities on June 5th.

Counsel Wellman does not, as I understand it, deny that SNF storage costs are in existing rates, that the SNF federal fee is in existing rates, or that nuclear plant decommissioning is in existing rates. Therefore the unbundled rates should deal with it.

I've already answered her claim that they are not collecting rates for energy efficiency programs now. We believe from all the information we have that they are.

Counsel Wellman indicates that witness Callen on nuclear waste has filed the same testimony that he's filed in a PSCR case. As I've indicated, that's not so. Yes, there are some similar recommendations, but there's also a lot of difference and there was an effort, considerable effort, to tailor it to the scope of this case.

Counsel Wellman indicates that their company PSCR cases will be decided by the Commission in June. The briefs are not even going to be filed in two of

these cases until this month, April 13th and April 27th. PFDs would probably be issued, if we're lucky, in June, but it seems to me the Commission in PSCR cases have sometimes taken a long time.

The Commission should have the opportunity to decide these issues in those cases as they relate to those cases and decide issues in this case that relate to this case, and they would have the benefit of doing it reasonably contemporaneously. It's of service to the Commission for us to focus on these issues appropriately as to each case, as we are doing.

Counsel Wellman says that her utilities are not engaging in securitization at this time, apparently to reference to Section 16d(6) of Act 141. Apparently they are reserving the right to securitize at some point, and I don't believe we have a denial that any of the utilities in these dockets are not going to file an application to securitize.

Your Honor, with that I would conclude. The Commission in its U-11237 order has already recognized the close relationship between the SNF federal fee and nuclear plant decommissioning. The utility itself did because they filed the application. The SNF storage costs are included in rates also. Witness Callen has addressed that in this case, and none of his testimony should be

stricken. It's not worth the effort to try to pick and choose something out of his testimony when both SNF costs and nuclear plant decommissioning costs can't be separated and they are both in the rates. You're down to such a little amount at that point that you're talking about a few grammatical phrases.

Your Honor, I would strongly urge that you not strike any of the testimony and that you utilize the process that's still early in this case to keep parties focused at the end result to be achieved when the filings in the future are to be made, and that we focus on those in the briefs, and that you deal with any of these issues then on the PFD.

Thank you.

JUDGE NICKERSON: All right. Thank you, Mr. Keskey.

All right. First I'd like to thank counsel for their written motions and their oral argument. I find that the scope of these proceedings is defined by the Commission order in U-12464 dated June 19, 2000, and the notice of hearings. 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 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.

I'd like to address for a minute the argument raised that it's premature to rule on the motion at this time with the idea that the companies will be filing on June 5, 2001.

I happen to agree with Mr. Aaron. I think there's a harm of not granting the motion inasmuch as the companies would have to expend time and energy to prepare responses to the testimony. There's other remedies available to MEC and MCAAA in the event the companies' filings on June 5, 2001 are outside of the scope of these proceedings. The parties can file written motions to strike testimony just as Staff has already done in this particular matter.

I draw an analogy, I guess, to Public Act 141 and the Commission's implementation of Public Act 141 to the old story of how do you eat an elephant. Well, you eat it one bite at a time. Well, the bite that the Commission has chosen to eat at this particular time is the unbundling of customer rates, and with the short time frame as set forth in Public Act 141, I can understand why

they've done that that way.

Now, the issues raised by MEC and MCAAA certainly are worthwhile, important, they're fundamental, they're even critical. But the test is whether or not they're relevant to these proceedings.

When I looked at the testimony of witness Callen, it was particularly striking in the language that was used in that testimony. Throughout the testimony Mr. Callen referred to expanding looking at the terms, the rates and the conditions, enhancing the protection of collection from ratepayers, an increasing need for protection of ratepayers, a failed response to ongoing management issues. There was a comparison of at-site and decommissioning costs. There was reference to the federal program failing and that there needed to be more adequate remedies to protect ratepayers. And I saw a similar slant in the testimony of witness Kushler and Crandall. Again, I think all of this testimony is beyond the scope of these proceedings.

Now, it was raised that the companies may be filing for implementation costs, and if that is the case, then we'll have to deal with that when that is in fact filed or presented before us.

So for those reasons I'm going to grant the motions to strike the testimony in their entirety.

MR. KESKEY: Your Honor, the motion to strike witness Callen was not in its entirety.

JUDGE NICKERSON: I understand. I meant the motion in its entirety which struck only those portions of Mr. Callen's testimony as indicated. But I think it strikes in its entirety Mr. Crandall and Mr. Kushler's testimony.

MR. WATTERWORTH: A point of inquiry. We also at page 7 moved to strike certain exhibits of Mr. Callen. We also moved to strike the exhibits of Mr. Kushler and Mr. Crandall.

JUDGE NICKERSON: That's likewise included.

All right. Anything else for the record?

MR. COYER: Yes, your Honor.

JUDGE NICKERSON: Yes, sir.

MR. COYER: In accord with Rule 337(3), your Honor, I'd like to make an offer of proof, unless your Honor would permit such an offer of proof at the time of the hearing.

My offer of proof, your Honor, would be that the testimony of Mr. Crandall is clearly within -- your Honor, I guess I'm waiting to hear whether or not you'll permit an offer of proof at this point.

MR. AARON: Your Honor, the prefiled testimony typically, if it's stricken, is the offer of

proof. So I'm not sure there's any need for Mr. Coyer to do more than that.

MR. COYER: Well, your Honor, the rules are pretty explicit on making an offer of proof. If it's inferred that the testimony itself is the offer of proof and the company acknowledges that, I may not have anything further to say.

Your Honor, I would also request that in light of the testimony being stricken, that your Honor would accept this as testimony to be bound into the record at the appropriate time the hearing is convened.

JUDGE NICKERSON: Well, if it's --

MR. COYER: May I just conclude that for purposes of perfecting the hearing, your Honor, under the Michigan Court Rules very frequently a written offer of proof is required. Certainly this transcript could reflect that written offer of proof. But the document itself, the testimony and exhibits itself, would be necessary to show that there is a record for perfecting the appeal to the Commission.

JUDGE NICKERSON: All right, Mr. Coyer.

MR. AARON: Your Honor, if you were following normal procedure, when you grant a motion to strike, the witness is sitting up here. The party offering the proof, if it's granted entirely, has the

document lined through indicating that it's been stricken and it goes into the record. So I don't see a need to go beyond the normal procedures if that's what we're talking about.

MR. COYER: Your Honor, an offer of proof is not an arguable motion. It's in the rules at 337(3).

JUDGE NICKERSON: I must admit I'm not up on offers of proof. I haven't had an offer of proof in a long time, so I'm not --

MR. COYER: Well, your Honor, I wanted to take every opportunity here to bring this efficiently before the Commission, and with all due respect, MCAAA obviously would have a difference of opinion on reading the statute. We want to be sure that we're not faced with additional costs of photocopying and all the rest of it when the record could include that testimony.

JUDGE NICKERSON: All right. Well, let's --

MS. WELLMAN: Your Honor, may I make a statement, please?

JUDGE NICKERSON: Well, let me do this: Mr. Coyer, your understanding of the offer of proof is that at the hearing -- I just want to understand what you're proposing -- at the hearing you would offer and Mr. Keskey would offer the testimony to be bound into the

record but subject to the motions or my ruling to strike.

MR. COYER: Yes, your Honor.

JUDGE NICKERSON: All right.

MR. COYER: I would head your Honor, honestly again, if you go to 337 in the Michigan Court Rules, this is not a --

JUDGE NICKERSON: The Commission rules?

MR. COYER: -- this is not a motion. This is an offer of proof, and obviously the company and the Staff have won their motion. This is merely for purposes of preserving this for the record. To deny this relief is extraordinary, and as Mr. Aaron has suggested, and I have previous experience, even utility companies have offered to put this into the record for purposes of preserving that record.

MS. WELLMAN: And your Honor, I'd just like to emphasize previous experience. We've been involved in three cases now in the PSCR proceedings and Mr. Coyer has made the same offers of proof because his testimony has been struck in the PSCR proceedings, and Judge Schankler and Judge Rigas have declined to accept his offers of proof.

So when he says it's not arguable, I think that it possibly is arguable.

MR. COYER: Your Honor, I'm not asking you

to make a ruling which is contrary to the Rules of Procedure or to the Michigan Court Rules. An offer of proof is not arguable. An offer of proof is provided for in the rules. It's a rather extraordinary result that would not permit that testimony to be placed in the record.

Again, this has no bearing on the relevancy of the testimony but merely perfecting an appeal.

MR. KESKEY: Again just to clarify, your Honor, MEC and PIRGIM request the same offer of proof relief relative to witness Callen and also witness Kushler as Mr. Coyer is requesting relative to witness Crandall.

MR. WATTERWORTH: Your Honor, may I suggest that you inform the parties of what your intent would be by letter after you've had an opportunity to satisfy yourself as to the proper procedure, since there seems to be so much conflict here.

JUDGE NICKERSON: All right. What I would like to do is take the motion or the offer of proof -- the request for offer of proof under advisement and notify the parties after I've had an opportunity to review the Commission rules and the court rules.

Anything else?

MR. AARON; Nothing from the company, your Honor.

JUDGE NICKERSON: All right. We're adjourned.

(At 2:50 p.m., the hearing was adjourned to 9:00 a.m., Thursday, July 26, 2001.)

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C E R T I F I C A T E

I, Evelyn R. Merrill, do hereby certify that I reported stenographically the foregoing proceedings had in the within-entitled matters, being Case Nos. U-12649, U-12650, U-12651, U-12652, and U-12655, before Daniel E. Nickerson, Jr., J.D., Administrative Law Judge, at the Michigan Public Service Commission, 6545 Mercantile Way, Lansing, Michigan, on Wednesday, April 4, 2001; and that the foregoing transcript constitutes a true and correct transcript of my said stenographic notes.

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Dated: April 9, 2001