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

EMERGENCY JOINT APPLICATION FOR LEAVE TO APPEAL, MOTION FOR IMMEDIATE CONSIDERATION AND SUPPORTING BRIEF OF MICHIGAN ENVIRONMENTAL COUNCIL AND PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN

The Michigan Environmental Council ("MEC") and the Public Interest Research Group in Michigan ("PIRGIM"), by and through their attorneys, Knaggs, Harter, Brake & Schneider, P.C., files this Joint Emergency Application for Leave to Appeal, Motion for Immediate

Consideration and supporting Brief ("Joint Application" or "Appeal") seeking Commission review and reversal of the Administrative Law Judge Daniel Nickerson's ("ALJ") April 4, 2001 ruling attached hereto, striking the prefiled testimony and exhibits of MEC and PIRGIM's witness Martin G. Kushler (and also Michigan Community Action Agency Association ("MCAAA") witness Geoffrey C. Crandall), regarding energy efficiency, energy conservation, and low-income protection issues, and also striking in part the testimony and exhibits of MEC and PIRGIM's witness Ronald C. Callen regarding nuclear waste storage and disposal issues, and spent nuclear fuel ("SNF") federal fee issues (See Exhibit A).[1] In support of this motion, MEC and PIRGIM urge that the above ruling of the ALJ should be reviewed and reversed for the following reasons:

1. The ALJ's ruling that the subject testimony was beyond the scope of this proceeding is unlawful, unreasonable, arbitrary and capricious. The testimony and exhibits presented by intervenor witnesses was filed pursuant to the scope of this proceeding as established by 2000 PA 141 ("Act 141"), and the Michigan Public Service Commission's ("MPSC" or "Commission") June 19, 2000 order in MPSC case U-12464, establishing this case as a contested case proceeding.

2. The ALJ's ruling striking the referenced testimony and exhibits of intervenor witnesses is unlawful, unreasonable, arbitrary and capricious as it denies the intervenors their rights to a full and complete hearing in this case, as guaranteed by the Commission's order in U-12464, the Commission's Notices of Hearing issued in these cases, and by several statutes governing Commission proceedings, including Sections 6 and 6a of 1939 PA 3, MCL 460.6a *et seq*., Section 7 of the Electric Transmission Act, MCL 460.557, the Michigan Administrative Procedures Act

[1]MEC and PIRGIM also support the emergency appeal filed by MCAAA seeking reversal of the ALJ's ruling striking the testimony and exhibits of its witness Crandall.

("APA"), 1969 PA 306, MCL 24.201 *et seq*., and the notice and hearing procedures established by Act 141, as well as the *Commission's Rules of Practice and Procedure Before the Commission*, R 460.17101 *et seq*.

3. The ALJ's ruling striking intervenors' testimony and exhibits is also contrary to constitutional principles of due process and equal protection because it violates the statutory notice and hearing rights governing the Commission's proceedings in this case, as noted in paragraph 2 above, and because it limits the intervenors' presentations to a narrower focus than is being applied to the implementation plans of the utilities in this case; in this regard, at least some of the utilities' implementation plans suggest that they may be requesting relief going beyond simply unbundling or restructuring tariff rates, including, but not limited to the possible grant of implementation costs, surcharges, recognition of certain costs as "regulatory assets," among other potential relief.

4. The ALJ's ruling striking the subject testimony and exhibits of intervenor witness is premature, and prejudges the purpose and nature of intervenors' testimony, contrary to the rights asserted above; in this regard, the October 2, 2000 filing by utilities of their implementation plans were very incomplete, as were the follow-up filings made by the utilities in February 2001; the utilities have also admitted that important filings are to be made by them on or before June 5, 2001; thus, it is premature for the ALJ to strike intervenor evidence which will bear on issues within the scope of these proceedings, and which will deal with issues that are being raised by the utilities in some instances.

5. MEC and PIRGIM also urge that the ALJ's ruling is erroneous, unlawful and unreasonable because it fails to recognize that the Commission in this case must ultimately make the decision as to how to implement the provisions of Act 141, and in this regard, the Commission is

also undertaking a legislative type function in addition to an administrative function subject to contested case proceedings; the ALJ's ruling striking the bulk of intervenors' evidence undercuts the purpose of this proceeding, and prejudges issues which should be presented to the Commission for the Commission's decision, based upon a full record, and the parties' briefs; the ALJ's ruling thus results in a one-sided ruling in favor of the applicants which unnecessarily destroys or severely handicaps intervenors' rights to meaningfully participate in these cases.

6. The ALJ's ruling also fails to balance the interest of all parties, and of ratepayer and utility interests, by prematurely prejudging the issues in this case, by accepting the incomplete plans and filings of the utilities while sharply and unnecessarily limiting the evidentiary presentations of the intervenors.

7. MEC and PIRGIM urge that this appeal meets all of the criteria justifying immediate review of the ALJ's ruling pursuant to Commission Rule 337, R 460.17337, as more fully discussed in the incorporated Brief.

8. This Motion is further supported by the incorporated Brief which comprises part of this Appeal.

WHEREFORE, MEC and PIRGIM respectfully request the Commission to grant this Emergency Joint Application for Leave to Appeal, Motion for Immediate Consideration, and upon review of same, to promptly review and reverse the ALJ's April 4, 2001 ruling striking in part the testimony and exhibits of witness Callen, and striking in its entirety the testimony and exhibits of witness Kushler, and of MCAAA witness Crandall; MEC and PIRGIM request such further and consistent relief which is lawful and reasonable.

BRIEF IN SUPPORT OF MOTION FOR IMMEDIATE CONSIDERATION AND EMERGENCY APPLICATION FOR LEAVE TO APPEAL

I. BACKGROUND AND PROCEDURAL HISTORY

1. On June 5, 2000, the Governor signed into law 2000 PA 141 ("Act 141") which provides for the restructuring of the electrical utility industry in Michigan.

2. On June 19, 2000, the Commission issued a number of orders, including U-12464, to commence implementation of Act 141. The Commission's order in U-12464 required the utilities in these cases to file electric restructuring implementation plans and applications, no later than October 2, 2000, to further implementation of the provisions of Act 141. The Commission's order in U-12464 established these proceedings as contested cases.

3. On October 2, 2000, the utilities in these cases filed their applications, which were assigned separate dockets as appearing on the cover sheet of this appeal, and "implementation plans" as required by the Commission's order in U-12464. Many of the implementation plans, however, were incomplete, as the plans themselves indicated.

4. On or about October 26, 2000, the Commission's Secretary issued the Notices of Hearing requiring wide-spread public notice of the utilities' applications in these cases.

5. In November 2000, MEC and PIRGIM timely filed Petitions to Intervene in these cases. The MCAAA also filed its Petitions to Intervene in these dockets.

6. On or about December 5, 2000, the MPSC Staff and several of the utility applicants filed objections to the interventions of MCAAA, MEC and PIRGIM in these dockets. On or about December 14, 2000, MCAAA, MEC and PIRGIM filed responses in opposition to these objections.

7. On or about December 13, 2000, the MPSC Staff filed a Motion to Consolidate these dockets. On or about December 18, 2000, MCAAA, MEC and PIRGIM filed responses supporting this Motion.

8. On December 20, 2000, combined hearings in these cases were held before ALJ Daniel Nickerson relative to the motion to consolidate, and also relative to the objections to the interventions of MCAAA, MEC and PIRGIM. The ALJ granted the interventions of MCAAA, MEC and PIRGIM.

9. On March 19, 2001, in accordance with the schedule established by the ALJ, MCAAA filed the Testimony and Exhibits of Geoffrey C. Crandall, regarding energy efficiency, conservation and low-income protection issues in each of these dockets (except for the Alpena Power Company docket). MEC and PIRGIM similarly filed the Testimony and Exhibits of Martin G. Kushler in each of these dockets (including the Alpena Power Company docket) regarding energy efficiency and conservation issues. On the same date, MEC and PIRGIM also filed in these cases (except for the Alpena Power Company case) the Testimony and Exhibits of Ronald C. Callen regarding nuclear waste storage and disposal issues, and issues regarding the federal SNF fee collected from ratepayers under the Nuclear Waste Policy Act ("NWPA") of 1982.

10. On or about March 23, 2001, the MPSC Staff filed a motion to strike the testimony and exhibits of witnesses Crandall and Kushler in their entirety, and to strike in part the testimony and exhibits of witness Callen (See Exhibit B). The MPSC Staff did not move to strike

witness Callen's testimony regarding nuclear plant decommissioning issues, but moved to strike portions of the testimony dealing with the SNF fee issues.[2]

11. On or about March 30, 2000, MCAAA, MEC and PIRGIM filed responses opposing MPSC Staff's motion to strike their witnesses' testimony described above. Several of the utilities in these consolidated dockets filed answers supporting the MPSC Staff's motions to strike.

12. On April 4, 2001, a hearing was held before ALJ Nickerson relative to MPSC Staff's motion to strike. Following review of the written and oral arguments, the ALJ granted the motion to strike in its entirety the testimony and exhibits of witnesses Crandall and Kushler, and granting the motion to strike in part the testimony and exhibits of witness Callen. The ALJ stated (TR 142-144):

> 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.

[2]The MPSC Staff could not contest the relevancy of the nuclear plant decommissioning issues since they are part of the implementation plans of the utilities; however, the MPSC Staff failed to realize that the SNF fee issues are integral to nuclear plant decommissioning, and that SNF storage, disposal, and fee costs are similarly collected in present rates, and therefore must be dealt with in any unbundling of rates. The SNF cost and fee issues are thus equally as relevant to these cases as any nuclear plant decommissioning issues.

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 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.

13. In accordance with MPSC Rule 337, MEC and PIRGIM timely appeal the ALJ's April 4, 2001 ruling to seek Commission review and reversal of said ruling.

II. ARGUMENT

A. MEC and PIRGIM Possess a Right to Intervention and to Meaningfully Participate in this Case by Presenting and Briefing Their Submitted Evidence, Pursuant to State Statutes, Commission Rules and Orders, and Constitutional Due Process and Equal Protection

MEC and PIRGIM possess a lawful right to intervene and to meaningfully participate in this case by presenting evidence and filing briefs thereon, based upon a full record, for the ***Commission's*** ultimate decision. These hearing rights are established by several state statutes governing the Commission's powers and procedures, the Commission's own rules, the Commission's order in U-12464 requiring the utilities to file their applications and electric restructuring implementation plans in these cases, and by constitutional due process and equal protection principles.

The Commission's June 19, 2000, order in case U-12464, which commenced these cases, expressly found, in accordance with Act 141, that this case involves "establishing. . . rates, terms, and conditions of service. . ." and that these cases were to be a **contested cases**. The Commission's June 19, 2000 order in U-12464 stated in part:

> On June 3, 2000, Governor John Engler signed Enrolled Senate Bill No. 937. The bill was filed on June 5, 2000, and become Public Act 141 of 2000. Section 10a provides in part:
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> > (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.
>
> * * *
>
> (5) The orders issued by the commission before the effective date of the amendatory act that added this section that allow customers of an electric utility to choose an alternative electric supplier, including orders that determine and authorize recovery of net stranded costs and implementation costs and that confirm any voluntary commitments of electric utilities, are in compliance with this act and enforceable by the commission. An electric utility that has not had voluntary commitments to provide customer choice previously approved by orders of the commission shall file a restructuring plan to allow customers to choose an alternative electric supplier no later than the date ordered by the commission. The plan shall propose a methodology to determine the electric utility's net stranded costs and implementation costs.
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> * * *
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> To implement these provisions of the act, each investor owned electric utility, other than Consumers Energy Company and the Detroit Edison Company, shall file, no later than October 2, 2000, 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. Each filing shall be a new docket, and will be subject to contested case proceedings. . . .

Because these cases involve the establishment of rates, terms, and conditions of service, as expressed in Act 141 and the Commission's order in U-12464, the Commission order has required **contested** case procedures to be utilized. These include full and fair application of all procedures established by constitutional, statutory, and rule provisions applicable to the

Commission. The Commission's June 19, 2000 order in U-12464, (p 3, paragraphs a and b) stated in part:[3]

> The Commissions FINDS that:
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> a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
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> b. Electric utilities and cooperatives should file restructuring implementation plans to comply with Act 141.

The Commission's order refers to statutes and rules which are replete with notice and hearing rights and requirements, including, but not limited to, Section 7 of 1909 PA 106, MCL 460.551 *et seq.*; Sections 6 and 6a of 1939 PA 3, MCL 460.6 and 6a, and the Michigan Administrative Procedures Act ("MAPA"), 1969 PA 306, MCL 24.201 *et seq.* Section 3(3) of the MAPA, MCL 24.203(3), also specifically defines a contested case subject to the MAPA, as "a proceeding including ratemaking, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. The MAPA, chapter 4, MCL 24.271 *et seq.*, grants to parties extensive notice and hearing rights, and the right to a fair and unbiased final agency decision based upon a complete record (e.g., Section 85, MCL 24.285). These MAPA procedures, as further implemented by MPSC Rules and the Michigan Court Rules (by incorporation), provide for the right to discovery, to a hearing, to briefing, a proposal decision by the preceding hearing officer, the filing of exceptions thereto, and

[3]These provisions are also referenced in the Commission's Notices of hearing in these cases.

the rendering of a final agency decision based upon a fair review of the whole evidentiary record. MEC and PIRGIM also specifically meet the definition of a "party" in a utility case pursuant to the MPSC Rules of Practice and Procedure [Rule 101(f) and (g)]. Commission Rule 101, R 460.17101, indicates that an intervenor party can include a natural person, corporation, public corporation, body politic, association, administrator, fiduciary of any kind, a joint venture, a partnership, or other entities listed in Rule 101(f) and (g). MEC and PIRGIM clearly meets one or more of these entity descriptions. The MPSC Rules are to be liberally construed to secure a just result, economical, and expeditious determination of the issues presented [Rule 103(2) R 460.17103(2)]. The MPSC's Rules of Practice and Procedure, R 460.17101 *et seq*., also contain extensive provisions regarding intervention, formal discovery, hearings, briefings, etc., and even incorporate the Michigan Court Rules where necessary.

Intervenors notice and hearing rights are also protected by constitutional principles. Due process principles involve concepts of fair play and fundamental fairness. *Building Owners and Managers Ass'n of Metropolitan Detroit v Public Service Commission*, 131 Mich App 504; 346 NW2d 581 (1984). Failure to observe the fundamental fairness essential to the very concepts of justice is a denial of due process of law. *Dodge v Detroit Trust Co*, 300 Mich 565; 2 NW2d 509 (1942). A failure to follow the requirements of notice and hearing clearly set forth in several MPSC statutes and the MPSC's own Rules establishes a *per se* violation of due process principles. These violations, committed in a needless rush to judgment, would constitute a quintessential example of a total lack of fair play and fundamental fairness. Moreover, constitutional principles of equal protection require that all procedural provisions be applied to the parties in this case in a uniform and non-discriminatory basis, and not on a "one-sided" basis that favors the applicant utilities.

The ALJ's ruling is contrary to and inconsistent with these notice and hearing requirements established by the Commission's order, and by constitutional, statutory, and rule provisions.

B. The Prefiled Testimony of Witness Kushler and Crandall on Energy Efficiency Issues, and of Witness Callen Regarding Nuclear Waste Storage, Disposal, and SNF Fee Issues, Are Properly Within the Scope of These Proceedings

The ALJ's ruling in part is based upon the claim that this case is very narrow in scope. However, as Staff's Motion (¶ 1) itself stated, this case involves the review of the utility restructuring implementation plans to permit retail customers to choose an alternative electric supplier no later than January 31, 2002, as required by Act 141. These cases are also commenced pursuant to the Commission's June 19, 2000 order in case U-12464, establishing contested case proceedings to review the implementation plans and carry out the purposes and provisions of Act 141. Thus, the scope of this proceeding is determined by the provisions of Act 141, and the Commission's order in U-12464. The testimony filed in this case by intervenors is within the scope of Act 141 and the Commission's order in U-12464, and within the scope of the notices of hearing issued in these cases.

The MPSC Staff's Motion (¶ 4) in these cases erroneously asserted to the ALJ that intervenors are attempting to expand the scope of the proceedings and to introduce irrelevant evidence. To the contrary, however, all of the issues presented by intervenors are within the scope of the policies and purposes of Act 141, and are supported by analogous provisions in Act 141, such as Section 10(d)(6) regarding the energy efficiency and low-income protection fund. Moreover, intervenors believe that several of the subject utilities are charging in rates for some of the costs of energy efficiency, demand-side management, or conservation programs in the states of Wisconsin and Minnesota (or in other states of The American Electric Power ("AEP") system). Since the utility

systems of most of these applicant utilities are dispatched on a centralized basis, and allocate their expenses to each state's customers under a uniform formula, it would appear that Michigan's ratepayers are paying for some of the administrative costs of these programs but not receiving the benefit of these programs. At the very least, some tariff provision or adjustment should be made to reflect this fact, such as a tariff credit to rates or an analogous program in Michigan in accordance with the intent of the legislature as stated in Section 10(d)(6). Moreover, as noted, the existing rates already include substantial sums collected from ratepayers for nuclear plant decommissioning, and for SNF storage, disposal, and fee costs. Therefore, the new tariff should also adopt appropriate policies, tariff provisions, and terms and conditions, to deal with these issues. All of intervenor testimony goes to these issues, which fall within the scope of Act 141, the Commission's order in U-12464, and the notices of hearing issued in these cases. They also deal with issues that are either expressly dealt with in the utility implementation plans (such as decommissioning), or are inherently incorporated in the costs and tariffs of each utility, which is the subject of these proceedings.

The ALJ's reference in his ruling (quoted, Brief p 8, supra) to witness Callen testifying regarding the need to "expanding. . . the terms, the rates and conditions, enhancing the protection of collection from ratepayers, an increasing need for protection of ratepayers" is also not a ground for concluding that witness Callen's testimony is beyond the scope of these proceedings or should be stricken. First, witness Callen's testimony is **foundational and informational** to specific tariff provisions that the parties will be proposing in response to the utilities' June 5, 2001 tariff filings. Second, witness Callen does not propose either an increase or decrease in existing rates, but tariff considerations to better protect existing rate collections from ratepayers for their intended purpose. These tariff protections are particularly relevant and timely in view of the federal default

in the nuclear waste disposal program and in view of the changes occurring due to electric restructuring. These tariff proposals can and should be reviewed in these cases, and also are not rendered unnecessary in these cases because the MPSC may also be able to consider these protections in a different case or context.

The ALJ's ruling should also be rejected because it fails to recognize that this proceeding in many ways is accomplishing a legislative function, namely, to implement Act 141 as applied to the smaller electric utilities in Michigan. While it is important to note that this administrative proceeding is subject to all of the statutory and constitutional rights to notice and hearing,[4] the legislative nature of this proceeding must also be recognized. In such a proceeding, no parties' rights are prejudiced by a full exploration of the foundational background and information, and issues, discussed in the testimony, all in support of specific tariff proposals and provisions which will be presented by intervenors in response to the utilities June 5, 2001 filings. The Staff's Motion (¶ 3) referred to the Michigan Rules of Evidence ("MRE"), MCR 401, 402, and 403 in support of its Motion. While intervenors' evidence clearly meets the test of these Rules, it should also be noted that this is not a proceeding, such as a complaint proceeding, involving two parties having specific claims, or a case involving a claim against a utility where judicial-type rules of procedures are tightly followed. Rather, this is undertaking a legislative function of implementing Act 141, wherein all parties should be permitted some latitude to present relevant information in support of their specific proposals. Intervenors urged the ALJ not to upset this important function by unnecessarily intruding

[4]As established in the MAPA, MCL 24.201 *et seq*., the various statutes governing Commission ratemaking, such as Sections 6 and 6a, MCL 460.6 and 460.6a, the Commission's Rules of Practice and Procedure, R 460.17101 *et seq*., and constitutional due process and equal protection, as well as pursuant to the provisions of Act 141 itself.

into the presentations, or "over-judicializing" this proceeding. Intervenors now urge the Commission to uphold this process as a fair quasi-legislative (as well as contested case) undertaking, by reversing the ALJ's April 4, 2001 ruling striking intervenors' evidence.

1. Energy efficiency and low-income protection issues

The testimony filed by witnesses Kushler and Crandall, which are to be viewed as complementary and coordinated, related to issues identified in Act 141 regarding the establishment of an energy efficiency and low-income protection fund [Section 10d(6)], among other provisions.[5]

The ALJ's ruling [and MPSC Staff's Motion (¶ 6)], also presented inadequate or erroneous grounds for striking the testimony and exhibits of witness Kushler. Witness Kushler's testimony is presented in conjunction with witness Crandall's testimony [filed on behalf of MCAAA] to persuade the Commission to adopt appropriate tariffs, and terms and conditions, in unbundling rates and restructuring these utilities' services, to meet some of the policies encouraged by the legislature in Act 141. This includes the Section 10(d)(6) concept of an energy efficiency or low-income protection fund or related services, along with the provisions aimed at encouraging the protection of low-income customers. Witness Kushler presents important supporting evidence as to why the Commission should consider these policies to be consistent with Act 141, by pointing to the broad benefits of said programs, the broad public support for these programs, and the fact that most states who have adopted electric restructuring have included such programs as part of their

[5] Act 141 establishes a number of specific provisions applicable to the two largest Michigan utilities, CECo and DECo. Act 141 also granted wide discretion to the MPSC to then implement electric restructuring and open access for Michigan's smaller electric utilities. The various provisions of Act 141 establish legislative intent relative to the energy efficiency and low-income protection fund in Section 10d(6) and to otherwise protect low-income customers (Sections 10s and 10t). These provisions can be implemented by the MPSC for these utilities.

restructuring requirements. Later testimony to be filed in response to the utility tariff filings will suggest specific tariff provisions, or terms and conditions.

The Staff's Motion had erroneously stated that witness Kushler's testimony is aimed at providing information in support of funding "new energy efficiency programs." The Staff's Motion also states that "existing rates which have no component for energy efficiency programs are to be unbundled." It may be incorrect to state that existing rates have no component dealing with energy efficiency, or low-income protection. For several of these utilities, these programs are not new energy efficiency programs, but are similar to programs already provided by these same utilities in the major part of their service territories, as noted. While Michigan ratepayers may be sharing in the costs of these programs, it is not receiving the benefit of said programs, and this inequity can be corrected in the tariff filing to be approved by the Commission.[6] Moreover, the Commission in this case can determine the terms of the tariffs which will apply to unbundled services, for both utility and open access customers. The Commission has jurisdiction, authority and discretion to consider appropriate terms to deal with the issues presented by intervenors. Staff cites no legal requirement to support its inherent theory that the Commission is without such discretion in this case.

The ALJ's ruling striking MCAAA witness Crandall should also be reversed. MEC and PIRGIM support and incorporate by reference the appeal filed in these cases by MCAAA. In addition, however, the MPSC Staff's Motion suggests that an intervenor seeking to raise demand-side management issues should proceed to do so in another docket that involves these specific issues. This argument is erroneous since this case inherently includes these issues, as noted, and because

[6]Intervenors are not aware of any rate credit reducing Michigan rates to reflect the fact that they are apparently paying for at least a share of the utility's administrative costs to operate these programs but not receiving the benefits of these programs already engaged in by these utilities.

there is no legal requirement that the intervenors pursue another docket which does not exist, or to file a new docket to pursue these issues. The Commission has discretion to consider them fully in these cases. The intervenors also note that energy efficiency, conservation and DSM programs can serve to reduce long-term costs, and can promote greater access to alternative competitive supplies of energy, for both open access and utility customers, by reducing system peak demands for both generating and transmission capacity.

2. Nuclear plant decommissioning and SNF storage, disposal, and fee issues

Intervenors also seek reversal of the ALJ's ruling striking portions of the testimony and exhibits of witness Callen. First, witness Callen's testimony provides important foundational evidence to support his proposed remedies and tariff recommendations. This evidentiary support is wholly appropriate, and is aimed at supporting more specific tariff provisions, terms and conditions, to be presented in response to the utilities' June 5, 2001 filings. Therefore, the testimony and exhibits are relevant.

As noted, the issues regarding SNF, and the federal fee, are also directly related to existing utility rates, and are included in all utility tariffs. Moreover, nuclear plant decommissioning and SNF issues are wholly intertwined.[7] Witness Callen's recommendations regarding the SNF fee

[7] The Staff request to sever the issues of decommissioning and SNF storage, disposal, and fee issues, cannot be sustained. The decommissioning and SNF issues are integrally related in that they involve high levels of radiation, are very costly, have common operations, finances, federal regulation and are carried out in a common time frame. In fact, decommissioning and SNF storage planning are dealt with in common, and the financial considerations are the same. In some case, the funds are even placed in a common escrow account (as approved by the MPSC Order of November 26, 1996, in Indiana Michigan Power Company case U-11237, see attached Exhibit C). Both decommissioning and SNF storage and disposal are costly and would be even much more costly to accomplish without the most care to assure common preparation for implementation. In addition, SNF disposal is integrally related to the other two functions (decommissioning and SNF storage) since storage will end only if the federal government completes its responsibilities for disposal. If

is wholly appropriate, and should not be rejected merely upon Staff's assumption that customers will obviously pay the SNF costs if they use nuclear generated electricity.[8] The Staff's Motion admits that decommissioning costs are relevant, but fails to note that decommissioning costs are directly affected by SNF storage and disposal, and that the two issues are so intertwined as to bar their separation in this case. Intervenors therefore appropriately seek to have the Commission adopt appropriate tariff provisions to ensure proper recognition of the SNF storage, disposal and fee costs, and nuclear decommissioning costs, in unbundled rates and tariff provisions.[9]

MEC and PIRGIM also seek reversal of the ALJ's ruling striking several of witness Callen's exhibits. All of these exhibits are relevant for the purposes noted above as evidence to support the need for appropriate review and development or preservation of tariff terms, conditions, and other remedies to protect ratepayers relative to SNF storage, disposal, and the SNF fee. All of this is relevant to the scope of this case and to establish appropriate tariffs in implementing Act 141.

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not (as shown to be a risk in witness Callen's testimony), storage and attendant costs must be continued, under whatever prior considerations and protections that are established by the Commission, and a wholly alternate process for disposal must be invented. So these matters must be commonly examined and treated. If not, the Commission might be led into wholly inappropriate decisions due to insufficient evidence. In short, Staff's Motion was wholly erroneous in attempting to separate wholly inseparable matters in these cases.

[8] In Wisconsin Electric Power Company's ("WEPCo") 2001 PSCR plan case, U-12615, none of WEPCo's witnesses could confirm that two major industrial (special contract) customers were in fact paying for the SNF fee (hearings, March 27-28, 2001).

[9] The Commission should ensure proper tariff provisions for both utility and open access services, and also focus upon fashioning appropriate tariffs for interruptible rates, for customers who are "swing customers," who may change back and forth from utility to open access service, and relative to standby and energy imbalance services, among others.

C. The ALJ's Ruling Is Premature and Precludes and Undercuts Rulings that the *Commission* Should Make Based upon a Complete Record and the Parties' Briefs Thereon

The ALJ's ruling is also extremely premature. The utilities' implementation plans filed on October 2, 2000 are all incomplete. Moreover, the utilities' filings of February 19, 2001 are incomplete and are preliminary to the more significant tariff filings to be made on June 5, 2001.[10] The intervenors plan on responding fully to the June 5, 2001 filings, and where possible, to recommend specific tariff provisions, terms and conditions, and further proposals to appropriately implement Act 141. Nevertheless, the intervenors, in good faith, and in accordance with the case schedule, filed their testimony on March 19, 2001, including the testimony of witnesses Kushler, Crandall and Callen, to present the necessary factual and conceptual foundation to support their positions in these cases. This testimony also includes as much discussion regarding tariff recommendations as is possible at this time. The Intervenors' March 19, 2001 filings are aimed at presenting foundational evidence regarding these overall issues, to be supplemented by the specific tariff filings in response to the utilities June 5, 2001 filings. None of the testimony, which provides necessary foundational discussion of the issues, should be stricken since it all relates to the scope and purpose of this proceeding, which is to implement Act 141.[11]

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[10] For instance, Indiana Michigan Power Company's ("I&M") February 19, 2001 filing consists of a scant five pages, with the most important substantive comment being that I&M promises to make their filing on June 5, 2001 to disclose the necessary information.

[11] The MPSC Staff's Motion (¶ 5) stated that the receipt of intervenor evidence "will cause unnecessary extra work for all parties and will delay the proceedings." This is wholly unexplained in the Staff's Motion. The schedule in this case has been set, the intervenors have abided by the schedule and have exerted constructive efforts in a conscientious manner to respond to the utilities' implementation plans, and the scant testimony and exhibits filed by the utilities so far.

As noted, these are contested case proceedings. Any Commission decision should be rendered upon a proper record, following full briefing by the parties, and a proposed decision by the ALJ. The work involved is the same as is normally accorded in contested cases, and no more. Moreover, the future filings and proceedings in this case will further sharpen the issues, legal arguments, and remedies or other provisions being advocated by the parties. Thus, it was highly premature for the ALJ to strike the intervenors' filings at this stage.

The ALJ's ruling should also be reversed because some of the utilities in these cases are requesting relief going beyond simply the filing of unbundled tariffs. From their incomplete filings made thus far, it appears that some of this relief includes recovery of implementation costs, recovery of "regulatory assets" and other relief. It thus appears that the ALJ's ruling would result in an unequal treatment of the parties to these cases.

As an example of the above, the I&M plan, filed on October 2, 2000, is incomplete, and is subject to further updates, revisions, and the filing of more specific rate tariffs. The plan also indicates a likelihood and probability that the restructuring plan may result in rate changes, adjustments, increases, or surcharges to implement the plan.[12] Throughout the plan, I&M reserves the right to propose amendments to the plan prior to the approval of final tariffs. The plan (p 4) states in part:

> The Plan proposes the methodology to be employed to determine AEP's stranded costs and implementation costs, describes the methodology for the calculation of a Transition Cost Adjustment Factor, defines the annual true-up procedure, reflects the continuation of AEP's non-bypassable nuclear decommissioning wires charge, and

[12]The plan also discusses certain issues related to the intervention of MEC and PIRGIM, including nuclear decommissioning costs, which inherently incorporate issues regarding nuclear waste disposal costs and related rate collections therefor.

> describes certain accounting authority for which AEP will request Commission approval. AEP necessarily reserves the right to propose reasonable amendments to the Plan prior to approval of the final tariffs.
>
> * * *
>
> AEP proposes to file, for all customer classes, its unbundled existing rates, open access tariffs, modified Terms and Conditions of Service, and any additional support deemed necessary and appropriate for the various aspects of its Michigan Customer Choice Program on June 5, 2001. AEP believes that this proposed filing date will provide ample procedural time for the Commission to process AEP's tariffs in order to comply with the requirements of 2000 PA 141.

I&M's plan (pp 5-6) also requests that the Commission establish a filing date of June 5, 2001 as a filing date for I&M's unbundled and open access tariffs, and terms and conditions of service for all customer classes. I&M also indicates that on that date, I&M would file an application with the Commission requesting the Commission to enter orders approving new electric service rates, terms and condition of service, authorizing I&M to treat certain costs as retail jurisdictional regulatory assets for future rate recovery (including implementation and other costs) and requesting such other relief that I&M may request. I&M's plan (pp 27-28) discusses its approach to the fuel generation sources and environmental disclosure requirements of Section 10r3 of Act 141, and also 10d9 of Act 141. The plan (pp 38-39) discusses the charges to be developed for customers choosing alternative suppliers, and those customers remaining with the utility, including charges for stranded costs, implementation costs, nuclear decommissioning charges, and related costs. The plan also discusses the recovery of power supply cost recovery charges (pp 38-39) under Act 304. The plan indicates that I&M in its June 5, 2001, unbundled rate filing will provide standard and open access distribution tariffs indicating proposed modifications to current tariffs which will include additional

revenues for implementation cost recovery and regulatory asset charges (pp 39-40). I&M's plan forthrightly admits that additional costs may arise from its June 5, 2001 filing in this case (p 64) as follows:

> AEP's projected costs relative to the industry restructuring defined by 2000 PA 141 represent initial estimates based upon the best information available to AEP at the time of the compilation and filing of this Plan. AEP would expect that further refinement of these projected costs and the identification of additional costs would be possible prior to the proposed June 5, 2001, filing.

I&M's plan indicates, or reserves the right to request, recovery of additional costs relative to transmission system capacity expansion plans, code of conduct, corporate separation plans, employee transition or separation, costs related to participation in the alliance RTO, customer choice education plan costs, nuclear decommissioning, and recovery of certain regulatory assets, and also excess capital expenditures (pp 66-78). The plan again discusses nuclear decommissioning cost recovery (pp 79-80), transition charges (pp 80-81), net stranded cost recovery, regulatory asset recovery (pp 82-83), implementation cost recovery (pp 83-84), transmission related cost recovery (pp 84-87). The plan also indicates the nature of its requested accounting authority (pp 87-88) stating as follows:

> With is proposed June 5, 2001, filing of unbundled and open access tariffs and modified Terms and Conditions of Service, or in a separate limited purpose filing, AEP plans to file an Application with the Commission requesting that the MPSC make and enter appropriate Orders authorizing AEP to treat certain costs as retail jurisdictional regulatory assets for future recovery through regulated rates. The costs incurred or expected to be incurred by AEP for which accounting authority may be requested could include, among other things, the costs described in Section J. 1. of this Plan related to AEP's restructuring plan filing, restructuring systems implementation, the transmission system capacity expansion plan, Alliance RTO costs, code of conduct implementation, corporate

> separation implementation, and employee transition program; Section J. 2., related to the customer awareness and education program; Section J.5, regarding generation-related regulatory assets; and Section J. 6., pertaining to return of and on capital expenditures in excess of depreciation levels and expenses incurred as a result of changes in taxes, laws, or other state and federal governmental actions. Without such authority AEP would be required, under financial accounting rules promulgated by the Financial Accounting Standards Board, to write off those costs as expense, thereby reducing net income and retained earnings. Thus, AEP would plan to request specific authority by a Commission Order to record certain costs as retail jurisdictional regulatory assets and to recover those regulatory assets through rates over a time period proposed by AEP and deemed reasonable and appropriate by the Commission.

In conclusion, I&M's plan (pp 88-89) requests the Commission to approve the plan, to establish a filing date of June 5, 2001 for AEP's unbundled and open access tariffs outlining terms and condition of service for all customer classes, and notifies the Commission that I&M proposes on June 5, 2001 to file an application with the Commission requesting approval of new electric service rate schedules, and related terms and conditions of service, authorizing I&M to treat certain costs as retail jurisdictional regulatory assets for future recovery through regulated rates, and approving other relief that I&M may request. In sum total, I&M's plan thus conclusively suggests that it is incomplete in its present state, that it is subject to significant supplementation or change through the filing of additional tariffs, terms, and conditions, and that I&M may be requesting adjustments or increases in rates as a result of this proceeding. As noted, the plan also covers a number of direct issues such as nuclear decommissioning which relate to primary issues in which MEC and PIRGIM have been involved in other MPSC cases.

D. Intervenors' Appeal Herein Meets the Requirements of Commission Rule 337

The instant appeal by intervenors, MEC and PIRGIM, fully meet the requirements of Commission Rule 337, R 460.17337. This rule provides in part as follows:

> (2) The commission will grant an application and review the pending officer's ruling if any of the following provisions apply:
>
> (a) A decision on the ruling before submission to the full case to the commission for final decision will materially advance a timely resolution of the proceeding.
>
> (b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large.
>
> (c) A decision on the ruling before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order.

Under the above criteria, a decision on intervenors' instant appeal will materially advance a timely resolution of this proceeding. The Commission can promptly advance this case by over-ruling the ALJ's precipitous ruling; and finding that intervenors' issues may be explored, intervenors' evidence be received, and briefed in this case. These issues then could be decided by the Commission in its final order in this case. This approach would protect intervenors' notice and hearing rights; and would provide the Commission the appropriate vehicle to decide the legal issues based upon a whole record (reflecting all parties' evidence) and full briefing.

A decision on intervenors' appeal at this stage will also prevent substantial harm to the appellants, as provided in Rule 337(2)(b) above. Intervenors are substantially harmed because their intervention in this case will be rendered largely or wholly illusory by the ALJ's ruling. At the

same time, there is no harm to the utilities by the receipt of intervenors' testimony in light of the hearing procedures available to all parties, including the utilities.

A ruling on intervenors' appeal at this stage is also in accordance with Rule 337(2)(c) because it is consistent with other situations wherein the Commission has granted appeals, and have accorded similar relief. A prime example is the Commission's May 27, 1999 order in case U-11560, wherein the Commission reversed the ALJ's ruling concerning the scope of the proceeding and granted the interventions of the appellants. The Commission should remain consistent with the sound reasoning provided in those orders.

CONCLUSION AND RELIEF

WHEREFORE, MEC and PIRGIM respectfully request the Commission to grant this Emergency Joint Application for Leave to Appeal, Motion for Immediate Consideration, and upon review of same, to promptly review and reverse the ALJ's April 4, 2001 ruling striking in part the testimony and exhibits of witness Callen, and striking in its entirety the testimony and exhibits of witness Kushler, and of MCAAA witness Crandall; MEC and PIRGIM request such further and consistent relief which is lawful and reasonable.

Respectfully submitted,

MICHIGAN ENVIRONMENTAL COUNCIL and
the PUBLIC INTEREST RESEARCH GROUP
IN MICHIGAN

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



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DATED: April 18, 2001

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

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

I, Laura J. Riley, being duly sworn, depose and say that on April 18, 2001, I served a copy of Michigan Environmental Council and Public Interest Research Group in Michigan's Emergency Joint Application for Leave to Appeal, Motion for Immediate Consideration and Supporting Brief upon:

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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.

Laura J. Riley

Subscribed and sworn to before me
this 18th day of April, 2001.

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

EXHIBIT A

The Testimony and Exhibits of MEC and PIRGIM's Witnesses Kushler and Callen and of MCAAA's Witness Crandall, are incorporated by reference as numerous copies were filed on March 19, 2001 in these dockets, and are also filed electronically.

The MPSC Staff's Motion to Strike dated March 23, 2001, and granted by the ALJ's April 4, 2001 ruling, identifies the portion of witness Callen's testimony and exhibits which was stricken by the ALJ.

EXHIBIT B

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 ?A **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

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

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.

Evelyn R. Merrill

)ated: April 9, 2001

EXHIBIT C

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of INDIANA MICHIGAN POWER COMPANY for ex parte approval to transfer the recovery of pre-April 7, 1983 spent nuclear fuel disposal funds in the St. Joseph rate area from the power supply cost recovery clause to the base energy charges and for authority to periodically reclassify pre-April 7, 1983 spent nuclear fuel disposal funds as nuclear decommissioning funds.	)	Case No. U-l 1237

At the November 26, 1996 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

ORDER APPROVING APPLICATION

On September 25, 1996, Indiana Michigan Power Company (I&M) filed an application requesting authority to transfer the recovery of pre-April 7, 1983 spent nuclear fuel disposal costs from customers located in its St. Joseph rate area. Instead of collecting for the pre-April 7, 1983 spent nuclear fuel disposal costs through its power supply cost recovery (PSCR) clause, I&M desires to shift recovery of those costs to its base energy charges. The application also requested that I&M be authorized to periodically reclassify pre-April 7, 1983 spent nuclear

fuel disposal funds collected from customers in both of the company's rate areas as nuclear decommissioning funds.

According to I&M, its request to change the recovery mechanism for pre-April 7, 1983 spent nuclear fuel disposal costs, which currently amount to $440,000 annually in its St. Joseph rate area, can be accomplished by simultaneously reducing its PSCR factor by 0.21 mills per kilowatt-hour (kWh) and increasing its base energy charges by the same amount. I&M proposes that the transfer of the recovery mechanism from the PSCR factor to its base energy charges should be implemented during the first billing cycle following the Commission's approval of its application or January 1997, whichever occurs later.

I&M also explains that its request for authority to periodically reclassify the Michigan jurisdictional pre-Apri17, 1983 spent nuclear fuel disposal funds as nuclear decommissioning funds will permit I&M sufficient flexibility to identify, as conditions warrant, amounts collected for the disposal of pre-Apri17, 1983 spent nuclear fuel that may, from time to time, be deposited or transferred into I&M's Michigan jurisdictional trust funds that are dedicated to the decommissioning of its Donald C. Cook Nuclear Plant. I&M proposes that amounts collected for the disposal of pre-Apri17, 1383 spent nuclear fuel be deposited into its spent nuclear fuel trust funds so long as the trust funds are less than 100% funded. If its spent fuel trust funds are more than 105% funded, I&M will reclassify such amounts for deposit into its Michigan jurisdictional nuclear decommissioning trust funds. If the spent nuclear fuel trust funds are more than 100% funded, but less than 105% funded, I&M will exercise discretion to classify the funds based upon 'its evaluation of the trend in the pre-April 7, 1983 spent nuclear fuel disposal fund status.

Based upon a review of the application and upon information received from the Commission Staff, the Commission finds that it is reasonable and in the public interest to grant I&M's request to transfer the recovery of pre-Apri17, 1983 spent nuclear fuel disposal costs in the St. Joseph rate area from the PSCR clause to the base energy charges and for authority to periodically reclassify pre-Apri17, 1983 spent nuclear fuel disposal funds from both rate areas as nuclear decommissioning funds. The public interest in the safe storage and ultimate disposal of spent nuclear fuel requires that I&M and its customers fulfill their obligations in an efficient and cost-effective manner. Because the funds collected from customers will be deposited in trusts, I&M will not retain any monies under this proposal and the funds necessary will be available when needed. In addition, I&M's proposal allows the funds necessary for the safe storage and disposal of spent nuclear fuel to be accumulated and placed in the appropriate trust without-increasing the cost of service to customers. Accordingly, the Commission finds that ex parte approval of the application is appropriate.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939. PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1982 PA 304, as amended, MCL 460.6h et seq.; MSA 22.13(6h) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17101 et seq.

b. Transferring the recovery of pre-April 7, 1983 spent nuclear fuel disposal costs from I&M's PSCR clause to the base energy charges in I&M's St. Joseph rate area will not result in

an increase in the cost of service to I&M's St. Joseph rate case customers. Therefore, ex parte approval of the application is appropriate.

c. Periodic reclassification of Michigan jurisdictional pre-April 7, 1983 spent nuclear fuel disposal funds as nuclear decommissioning funds as set forth in the application is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

A. Effective January 1997, Indian Michigan Power Company shall increase its St. Joseph rate area base energy charges by 0.21 mills per kilowatt-hour and shall reduce its power supply cost recovery factor for that rate area by the same amount. On that same date, Indiana Michigan Power Company shall cease recovering pre-Apri17, 1983 spent nuclear fuel costs through its St. Joseph rate area power supply cost recovery clause.

B. Indiana Michigan Power Company is granted authority to periodically reclassify Michigan jurisdictional pre-April 7, 1983 spent nuclear fuei disposal funds as nuclear decommissioning funds in accordance with its application.

C. Indiana Michigan Power Company shall file within 30 days of the date of this order revised tariff sheets reflecting the transfer of pre-Apri17, 1983 spent nuclear fuel costs from its power supply cost recovery clause to base energy charges for the St. Joseph rate area.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to-appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(SEAL)

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner

By its action of November 26, 1996.

/s/ Dorothy Wideman
Its Executive Secretary