STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

**MICHIGAN COMMUNITY ACTION AGENCY ASSOCIATION'S EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

The Michigan Community Action Agency Association ("MCAAA"), by and through its attorneys, Knaggs, Harter, Brake & Schneider, P.C., and under Rule 337, file this emergency application for leave to appeal urging that the Michigan Public Service Commission ("Commission" or "MPSC") reverse the Administrative Law Judge's ("ALJ") April 4, 2001 ruling striking the expert testimony and exhibits of Geoffrey C. Crandall which address the Commission's administration of

a Low-Income and Energy Efficiency ("LI/EE") Fund under 2000 PA 141 ("PA 141").[1] In support, MCAAA states further:[2]

**A. PA 141 Requires that LI/EE Fund Questions be Resolved Here and Now**

1. These cases were set up under PA 141, the Commission's June 19, 2000 order in U-12464, and the Commission's October 26, 2000 notices of hearing initiating these cases. That order and those notices properly cite the MPSC's authority under PA 141 as well as its broader authority to regulate rates, terms and conditions of service. **The Legislature mandated that "rates, terms and conditions of service" for restructuring these companies' services be completed and authorized by the Commission no later than January 1, 2002.**

2. Effective on June 5, 2000, PA 141 specifically:

- requires that 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 and alternative electric supplier." MCL 460.10a(1); MSA 22.13(10a(1)). Emphasis added.

- requires that "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 supplier no later than the date ordered by the commission." MCL 460.10a(5); MSA 22.13(10a(5)).

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[1] MCL 460.10a, *et seq*; MSA 22.13(10a), *et seq*.

[2] MCAAA adopts this application as its supporting brief and incorporates its April 4, 2001 oral argument at the hearing as part of its supporting brief, *see* 3 Tr 117-129. The transcript of the oral argument is available on the MPSC's electronic filing web site and will not be attached here, to avoid unnecessary filing expenses and duplication.. MCAAA notes that it has briefed the question of the relevance of energy efficiency for Act 304 proceedings to the Commission in Case Nos. U-12613, U-12614, and U-12615. MCAAA believes that energy efficiency programs, as they directly impact utilities' power supply costs, come directly within the scope of Act 304, a point made frequently to the Commission in MCAAA's applications in these cases. Because PA 141 directly requires there be a LI/EE Fund and requires the Commission to administer it and to provide standards for low-income protection and to encourage energy efficiency, the only question of relevance is when and where will the MPSC consider these questions. *See*, paragraphs 15-25, *infra*.

- requires that "No later than 1 year from the effective date of the amendatory act that added this section, each electric utility shall file an application with the commission to unbundle its existing commercial and industrial rate schedules and separately identify and charge for their discrete services." MCL 460.10b(2); MSA 22.13(10b(2);

3. PA 141 also **establishes a "low-income and energy efficiency fund," to administered by the MPSC and requires that the Commission "establish standards for the use of the fund to provide shut-off and other protection for low-income customers and to promote energy efficiency by all customers." MCL 460.10d(5) and (6); MSA 22.13(10d(5) and (6)).** Emphasis added.[3] In addition, PA 141 addresses licensing procedures, a code of conduct, a renewable energy program,[4] self-service power generation, membership in a regional transmission organization or independent systems operator, and improvement of transmission and distribution services. For Detroit Edison Company ("DECo") and Consumers Energy Company ("CECo"), many of these issues are being addressed separately in other dockets. **For these cases, the question is not whether there will be an LI/EE Fund, but only when the Commission chooses to address its responsibility to administer and establish standards for the LI/EE Fund.**

4. No other MPSC dockets other than these cases consider PA 141 issues for the smaller electric utilities[5] so that, based on its orders establishing policy for CECo and DECo,

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[3]It should be noted further that PA 141's enabling language places "energy conservation" within its scope, the title creates a "fund," and Section 10d(5) references the LI/EE Fund specified in Section 10d(6).

[4]On April 17, 2001, the Commission established a forum for addressing this issue in U-12915. The Commission requested comments and reply comments presumably such that a program for renewable could be in place by January 1, 2002.

[5]These are Wisconsin Electric Power Company ("WEPCo"), Edison Sault Electric Company, Wisconsin Public Service Corporation ("WPSCorp"), Northern States Power Company ("NSP-W"),

MCAAA reasoned that the MPSC could notice cases for the smaller companies which could address all outstanding restructuring issues, including the LI/EE Fund questions in an efficient manner. Accordingly, the Commission issued an order on June 19, 2000 in U-12464 directing "each investor owned electric utility, other than [CECo] and [DECo], [to] 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." *On the Commission's Own Motion*, Opinion and Order, Case No. U-12464 (June 19, 2000), p. 2. Emphasis added. The MPSC's order establishes contested case proceedings for review of the applications. The Commission's order brought the companies' applications under the MPSC's full rate-making authority, not limited to Act 141. The Commission's June 19, 2000 order did not limit the applications or intervenors to considering an unbundling of existing tariffs.

5. Similarly, the notices of hearing in these case, issued on October 26, 2000, cite PA 141 and the Commission's broader rate-making authority, in stating that such restructuring plans as had been filed by these smaller utilities must be "in compliance with 2000 PA 141." The MPSC's notices of hearing did not limit the applications or intervenors to considering an unbundling of existing tariffs.

**B. MCAAA Raised the LI/EE Fund Questions and Presented Evidence**

6. On or about October 2, 2000 the companies filed their restructuring plans, seeking substantially more relief than an unbundling of existing tariffs. Staff observed that these restructuring applications were incomplete and MCAAA noted that the scope of the applications

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Indiana Michigan Power Company ("AEP/I&M"), and Alpena Power Company.

went beyond unbundling tariffs to additional restructuring issues contemplated more broadly by PA 141. *See*, 2 Tr *passim.*, December 20, 2000.

7. On December 20, 2000 the ALJ granted MCAAA's petition to intervene and indicated that the scope of the cases was "issues envisioned by Public Act 141." 2 Tr 88.

8. The ALJ went further to state that, to the extent parties want to address questions otherwise not within the scope of Act 141, "there's other proceedings and adequate remedies available to address ... those shorts of things." 2 Tr 89. MCAAA's petition to intervene indicated that energy conservation and efficiency were to be brought into this proceeding by PA 141 so that the ALJ was making specific reference to MCAAA's view that energy efficiency and conservation were directly related to these utilities' power supply costs. It is the ALJ's view that these issues involving power supply costs could be addressed elsewhere.

9. MCAAA offered Mr. Crandall's testimony and exhibits on the direct relationship between energy efficiency and load management on the 2001 and forecasted power supply costs of NSP-W in U-12614, WEPCo in U-12613, and WSPSCorp in U-12615. Because AEP/I&M's ("I&M") power supply cost recovery cases have been suspended, no such evidentiary presentations could be made concerning the impact of energy efficiency and conservation on AEP/I&M's power supply costs, except in the present docket for I&M, U-12652, but which evidence would be limited to AEP/I&M's contributions to the LI/EE Fund.

10. The ALJs in these PSCR cases (U-12613, U-12614, and U-12615) have wrongly stricken all of Mr. Crandall's testimony associated with the direct impact on electric

utilities' power supply costs.[6] MCAAA, along with MEC/PIRGIM, filed Applications for leave to appeal and reverse such rulings at the MPSC in U-12613, U-12614, and U-12615. Such applications demonstrate conclusively that:

- energy efficiency and conservation are directly related to electric utilities' power supply costs;
- energy efficiency and conservation are directly relevant to Act 304 proceedings; and,
- the Commission has jurisdiction to create incentives for energy efficiency and conservation programs and has consistently exercised that jurisdiction in Act 304 cases.

Such applications for leave to appeal are now pending at the MPSC and MCAAA urges the Commission to act expeditiously to resolve these issues.

11. Believing that energy efficiency and conservation issues come directly within the issues specifically identified and "envisioned by Public Act 141," as noted by the ALJ, and observing that PA 141 establishes a low-income and energy efficiency fund which the Commission

[6] Mr. Crandall's testimony in these PSCR cases makes clear that energy efficiency, conservation and load management are particularly critical during these PSCR plan and forecast periods while these smaller utilities are restructuring in response to 2000 PA 141. The companies' own documents and testimony on cross examination in these consolidated cases will support that reasonable use of energy efficiency services, already contemplated and offered in many of these companies' other territories, can lower power supply, transmission and distribution costs sufficiently to justify allocations to the Michigan LI/EE Fund. The empirical connection between energy efficiency, power supply and transmission/distribution costs is clear and simple: energy efficiency reduces load growth and thus reduces utilities' costs of generation and transmission and distribution. The Michigan Court of Appeals has found that such activities are "directly related to power supplied by [electric utilities]." *Detroit Edison v Public Service Commission*, 221 Mich App 370, 385; 562 NW2d 224 (1997).

administers, MCAAA filed Mr. Crandall's testimony and exhibits, coordinated with those of Dr. Kushler offered by MEC/PIRGIM, on March 19, 2001.[7]

12. Mr. Crandall's testimony and exhibits are directly relevant to the Commission's duty to administer Michigan's Low Income and Energy Efficiency ("LI/EE") Fund and "to establish standards for the use of the fund to provide shut-off and other protection for low-income customers and to promote energy efficiency by all customers." MCL 460.10d.(6); MSA 22.13(10d.(6)). Mr. Crandall's testimony addresses how the MPSC can determine how these smaller utilities will contribute to the Fund.

**C. The ALJ Improperly Struck MCAAA's Evidence on the LI/EE Fund**

13. On March 23, 2001, Staff moved to strike Mr. Crandall's testimony alleging that Mr. Crandall's testimony is not within the scope of these cases. Staff claims that the scope of these cases is so "very narrow" as to only consider "revision of tariffs and unbundling of existing rates to allow an existing customer to choose an alternative electric supplier," not to consider the MPSC's duty to administer the LI/EE Fund or to establish standards for that fund or to encourage energy efficiency, all of which are required by PA 141. Staff claims MCAAA has an affirmative obligation to take its PA 141 questions elsewhere and advises MCAAA: "Should an intervenor seek to raise these issues such as DSM for consideration, it should be done in another docket that involves these specific issues." The smaller utilities, notably AEP/I&M, NSP-W, WEPCo, and WSPCorp

[7] MEC/PIRGIM filed the testimony and exhibits of Mr. Callen on March 19, 2001. Because these cases involve unbundling of existing rates, Mr. Callen's testimony draws attention to the fact that each company collects in rates 1 mil/kWh for spent nuclear fuel ("SNF") and that the Commission must determine what provisions should be included in its retail open access tariffs for such rates and what protections to provide for ratepayers as consideration for these costs. MCAAA supports the views expressed in Mr. Callen's testimony and exhibits.

supported Staff's motion and variously seeking to limit MCAAA's presentation of evidence while leaving the door open to their own issues, not otherwise specifically referenced in the MPSC's June 19, 2000 order in U-12464.[8]

14. On March 30, 2001, MCAAA filed its Response to MPSC's Motion to Strike the Testimony and Exhibits of Geoffrey C. Crandall. MCAAA's Response and oral argument at the Commission on April 4, 2001 demonstrated that:

- PA 141 requires the MPSC to restructure these smaller utilities by January 1, 2002 such that the Commission has authorized all "rates, terms and conditions of service;"
- the MPSC requires these smaller utilities to file applications in compliance with Act 141 no later than June 5, 2001 as indicated by the Commission's June 19, 2000 order in U-12464;
- such applications can address issues contemplated by Act 141, not otherwise resolved by the Commission, and are not restricted to unbundling of tariffs;[9]
- intervenors may address such issues which are contemplated by Act 141, not otherwise addressed or resolved by the Commission in other cases;
- intervenors may specifically offer testimony on the LI/EE Fund, established by PA 141, which the Commission is to administer and for which the MPSC must establish standards for low-income protection and encourage energy efficiency in Michigan;

[8] On these issues, the ALJ advised MCAAA that the scope of the case would not be determined by the scope of the utilities' applications but rather by PA 141 and the Commission's U-12464 order of June 19, 2000. *See*, 3 Tr 142-143.

[9] MCAAA noted such issues could include securitization, transmission and distribution, spent nuclear fuel funding, stranded cost recovery, and implementation costs. Some of these issues are addressed by the smaller utilities' applications. AEP/I&M also seeks special accounting treatment for assets in lieu of stranded cost recovery.

- time is of the essence, particularly since the MPSC has yet to directly address questions associated with the LI/EE Fund for these smaller utilities and since DECo is now securitizing its assets so as to permit accounting for the "excess savings" anticipated for the LI/EE Fund in PA 141, Sections 10d(5) and 10d(6);[10] and,

- it would be unfair and unlawful for LI/EE Funds to be limited to those utilities' territories which generate the funding and likewise unlawful for some utilities' territories to not support the LI/EE Fund since these utilities and their ratepayers would benefit from the fund.

15. Nonetheless, the ALJ granted the Staff's motion adhering to his earlier December 20, 2000 findings that these cases are limited to an unbundling of existing tariffs, as defined in the MPSC's June 19, 2000 order in U-12464. The ALJ did affirm the significance and critical importance of the energy efficiency issues for the Commission: "Now, **the issues raised by MEC and MCAAA certainly are worthwhile, important, they're fundamental, they're even critical**." 3 Tr 144. Emphasis added.

**D. The Commission Should Reverse the ALJ and Address the Issues Here**

16. **The question for the Commission to resolve here and now is when and where will issues associated with the LI/EE Fund be addressed.** To reiterate, the Commission has a clear duty to administer the LI/EE Fund and to establish standards for low-income protection and to encourage energy efficiency. Moreover, as MCAAA has repeatedly demonstrated, the MPSC has the statutory obligation to manage vital energy efficiency issues generally and specifically in

[10] The MPSC issued a press release on April 13, 2001 announcing that DECo will reduce its commercial and industrial rates by 5%, effective April 14, 2001, "resulting from the sale of securitization bonds." The sale of such bonds means that DECo will imminently achieve the "excess savings" contemplated by the MPSC's November 2, 2000 final order in U-12478 which identified some $50 million annually for six years to be allocated to the LI/EE Fund.

these cases as well as under Act 304[11] and its broader rate-making authority. The Legislature gave the Commission such specific and direct duties to review and mandate peak load management, energy efficiency, and related utility activities.

17. Moreover, the parties in these cases have the expertise and the time to address all relevant LI/EE Fund issues. Surely, Staff and the smaller utilities have expertise on issues associated with energy efficiency and low-income protections and the case schedule will still accommodate placing evidence in the record on these questions. The smaller utilities have until April 27, 2001 to file rebuttal, but may use the June 5, 2001 filing date to file further testimony responding to MCAAA's evidentiary presentation on the LI/EE Fund. Cross examination of witnesses is scheduled for July 2001, giving the ALJ and parties sufficient time to sharpen the issues for the MPSC which can issue its orders prior to January 1, 2002, as the law requires.

18. Staff has argued here and elsewhere that the Commission's duty to administer the LI/EE Fund and to establish standards for low-income protections and to encourage energy efficiency should be raised in other cases. Staff asserts that MCAAA has an obligation, on its own motion, to raise these issues before the Commission. Staff's argument has no merit.

19. Staff's argument has no merit because the Legislature through PA 141 places an affirmative duty on the Commission to administer the LI/EE Fund and to establish appropriate

[11]There is no precedent for the Commission rejecting DSM testimony in an Act 304 case based on a finding that such testimony is irrelevant under Act 304. To so find in this case would reverse or nullify the Commission's previous orders, abrogate the Commission's specific authority under Act 304 and its general rate-making-powers to address energy efficiency, and disarm a significant set of policy tools which the Legislature intended to provide for the Commission to address Michigan's now growing demands for energy supply. These tools are no less potent as the Company moves toward restructuring. The Commission cannot abstain and should not reject energy efficiency measures in contravention of the obvious need and the Commission's Legislative mandate, particularly as the Company is moving toward Legislatively mandated restructuring.

standards for low-income protections and to encourage energy efficiency. Further, the Legislature places the burden on the regulated utilities to comply with PA 141, not upon MCAAA to file a complaint case or a motion with the MPSC.

20. Resolving these matters has become even more critical in that:

- Funds for the LI/EE Fund are imminently available, and
- these smaller utilities must have all rates, terms, and conditions of service in place, with tariffs approved, by January 1, 2002.

If these smaller utilities are to comply with fair and reasonable rules with respect to administering and allocating monies to the LI/EE Fund for their own and their ratepayers' benefit, the time is now, not later, and not in a case to be initiated by MCAAA. Such a complaint proceeding may take months to notice and more months or years to resolve.

21. Anticipating such a shell game argument would be made, MCAAA has intervened into the each smaller utilities' 2001 PSCR plan case and into available rate cases, offering energy efficiency and conservation issues as relevant under the law.

22. MCAAA does not accept the ALJ's narrowing of the scope of these cases nor concedes that energy efficiency is irrelevant within the context of PA 141 or Act 304, but rather requests the Commission to preclude the "relevance shell game" and clearly designate where and how energy efficiency issues should properly arise in Michigan. The Commission should do so in response to the emergency application for leave filed in these cases and in U-12613, U-12614, and U-12615.

23. Preferably, the Commission should rule that the direct cost impact of energy efficiency on power supply costs should be determined under Act 304 and that questions involving

the implementation of specific energy efficiency programs approved in Act 304 be raised in subsequent company plan and reconciliation cases under Act 304. Furthermore, given the broad scope of the Company's initial and incomplete October 1, 2000 filing in U-12649, and the equally expansive and incomplete filings of the other smaller utilities in the consolidated dockets,[12] the Commission should permit MCAAA's testimony on the LI/EE Fund to be admitted in U-12649, *et al*. Such testimony and other evidence would permit the MPSC to expeditiously establish the necessary standards for energy efficiency programs which would be implemented and more closely assessed in these smaller utilities' Act 304 cases.[13]

24. The Commission has good cause to grant this Joint Application in view of Rule 337 which states that the Commission will review the ALJ's rulings if a decision on the ruling will "materially advance a timely resolution of the proceeding" or "prevent substantial harm to the appellant or the public-at-large." Rule 337(2).

25. Unless the Commission rules immediately that energy efficiency and the Commission's duties to administer the LI/EE Fund and to establish standards for low-income protection and to encourage energy efficiency are relevant in this Act 304 proceeding, as the laws requires it must, the public-at-large, these companies's ratepayers, and MCAAA will be substantially harmed. Michigan will be further denied the obvious benefits of energy efficiency and deprived of the low-income protections mandated by the Legislature. Moreover, the Commission runs the risk of being in violation of PA 141.

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[12] This point is conceded by the Staff and the parties themselves.

[13] AEP/I&M presents a special case, having its PSCR clause suspended. For AEP/I&M special provisions would have to be made permitting an evaluation of such energy efficiency programs in other ways, yet to be determined.

26. Expeditious review and reversal of the ALJ's ruling will permit the case to proceed without inordinate delay. This case is now advancing through rebuttal filing (April 27, 2001), final tariff filings by the smaller utilities (June 5, 2001), intervenors' and Staff's rebuttal filings, and, cross of all parties in July, 2001. The Commission can issue an order on these issues as early as its first May 2001 meeting.

**E. Remedies**

WHEREFORE, MCAAA respectfully request the Commission to promptly issue its order granting the relief requested in this application and to provide in its order that the ALJ's April 4, 2001 rulings be reversed and that the ALJ establish suitable procedures for the receipt of Mr. Crandall's testimony and exhibits in these cases. MCAAA further requests that the testimony and exhibits of Dr. Kushler, which are coordinated with that of Mr. Crandall, be reinstated along with the stricken portions of Mr. Callen's testimony and exhibits. MCAAA requests such further and consistent relief which is lawful and reasonable based on the foregoing.

Respectfully submitted,

MICHIGAN COMMUNITY ACTION
AGENCY ASSOCIATION

By Its Attorneys,
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DATED: April 18, 2001

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| 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 |
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## 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 Community Action Agency Association's Emergency Application for Leave to Appeal upon:

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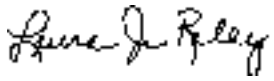
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Service was accomplished via electronic mail and by placing same in a United States mail depository, enclosed in envelopes bearing postage fully prepaid and addressed properly.



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 MCAAA's witness Crandall, and MEC and PIRGIM's Witnesses Kushler and Callen, 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**

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| 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