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June 26, 2006

ELECTRONICALLY FILED

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

RE: MPSC Case No. U-14703

Dear Ms. Kunkle:

Enclosed please find *City of Mackinac Island's Response in Opposition to Edison Sault Electric Company's Motion to Strike Pre-filed Direct Testimony of Thomas P. Lorden*, with Proof of Service thereon. This is a E-File Paperless case; therefore all documents are being submitted and served electronically.

Thank you for your assistance. Should you have any questions, please feel free to contact my office.

Very truly yours,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.

Thomas J.
Waters

Digitally signed by Thomas J.
Waters
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Date: 2006.06.26 16:06:56 -04'00'

Thomas J. Waters

TJW/als
Enclosures

cc: Hon. Sharon L. Feldman, ALJ
Parties of Record

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
EDISON SAULT ELECTRIC COMPANY)
for authority to implement a power supply)
cost recovery plan and for the 12 month)
period ending December 31, 2006)

Case No. U-14703
(E-File Paperless)

**CITY OF MACKINAC ISLAND'S RESPONSE IN OPPOSITION TO EDISON
SAULT ELECTRIC COMPANY'S MOTION TO STRIKE PRE-FILED DIRECT
TESTIMONY OF THOMAS P. LORDEN**

NOW COMES the City of Mackinac Island, by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., before this Commission and states as follows:

1. Edison Sault's motion seeks to strike intervenor Mackinac Island's pre-filed testimony containing portions of Thomas P. Lorden's direct testimony *admitted* in case U-14707. Edison Sault claims that Mr. Lorden's testimony is not relevant, is prejudicial, and constitutes hearsay.

2. At the outset, Mackinac Island contends that Mr. Lorden's testimony in U-14707 is relevant to the disputed issues in this case. Mr. Lorden is a Senior Project Specialist in Wisconsin Electric Power Company's Regulatory Affairs and Policy Department. Wisconsin Electric is Edison Sault's sister corporation, both being owned by WEC. Mr. Lorden's testimony bears directly upon the reasonableness and prudence of Edison Sault's requested PSCR factor, and upon reasonableness and prudence of Edison Sault's past and current planning practices. In short, this testimony makes clear that a failure to build and operate generating plants or enter into long term power purchase agreements at stable prices, and a short-sighted decision to satisfy incremental power needs by purchasing

that power at spot market prices, can lead to price increases, fluctuations and instability, which is exactly what is occurring in this case.

3. Edison Sault's argument that Mr. Lorden's sworn testimony in U-14707 is not relevant to these proceedings is misplaced and represents an impermissible, rigid application of the Rules of Evidence that do not apply to administrative proceedings. "Agencies and hearing officers are rarely overturned for admitting evidence, but may be for excluding it." LeDuc, *Michigan Administrative Law*, § 6.56 (2005 ed.) (citing *Spratt v Dep't of Social Services*, 169 Mich App 693; 426 NW2d 780 (1988)). It is well-settled that "[t]he standards for admission of evidence in administrative proceedings are not the same as those in courts of law." *Viculin v Dep't of Civil Service*, 386 Mich 375, 403; 192 NW2d 449 (1971). The MPSC permits the admission of testimony so long as the testimony is "germane" to the issues raised. See *In Re Detroit Edison Company*, MPSC Case No. U-13933 (December 9, 2003) (reversing ALJ's decision to strike testimony as not relevant). Further, the MPSC has determined that, to be admissible, testimony need only have "some relevance" to the issues in a case. *In Re Consumers Energy*, MPSC Case No. U-12134 (April 24, 2000) (reversing ALJ's decision to strike testimony as not relevant). Instead of striking proffered testimony, "the parties should deal with questions about how the testimony relates to the scope of this proceeding and the weight to be given to the testimony through cross-examination and briefing." *Id.*

4. As explained above and at a minimum, the proffered portions of Mr. Lorden's testimony in U-14707 bear "some relevance" and are "germane" to the issues in this case. The ALJ is more than capable of determining the weight to be given to the testimony at issue. Edison Sault, therefore, should not be permitted to act as "gatekeeper" and deprive Mackinac

Island of its statutory right, as an interested party, “for a full and complete hearing.” MCL § 460.6a(1). Rather, Edison Sault is free to explain why Mr. Lorden’s relevant testimony should not be considered.

5. Edison Sault, without any explanation, also claims that Mr. Lorden’s testimony will create “confusion”, “muddy” the evidentiary record, and it is an “utter waste of time” to admit the testimony. In conclusory fashion, Edison Sault claims that this is the case because the only issue in this PSCR proceeding is the reasonableness and prudence of Edison Sault’s projected power purchases. What Edison Sault either fails or refuses to recognize, however, is that Mr. Lorden’s testimony *does* relate the issues in this case. Again, this testimony makes clear that a failure to build and operate generating plants or enter into long term power purchase agreements at stable prices, and a short-sighted decision to satisfy incremental power needs by purchasing that power at spot market prices, can lead to price increases, fluctuations and instability, which is exactly what is occurring in this case. Also again, Edison Sault is not the arbiter of what does and does not relate to a determination of whether its power purchases are reasonable and prudent, and Mr. Lorden’s testimony is admissible because it relates directly to what Edison Sault’s sister company, Wisconsin Electric, feels should be done to provide “customers with a stable, less costly electricity supply”, i.e. the ultimate goal in all PSCR proceedings. This testimony is particularly relevant in this case given the fact that WEPCo is making Edison Sault’s purchasing decisions under the Joint Operating Agreement.

6. Edison Sault incorrectly argues that Mr. Lorden’s pre-field and admitted testimony in Case U-14707 constitutes hearsay and is, therefore, inadmissible in this case. A cursory review of the Rules of Evidence belies that contention. Mr. Lorden’s testimony in

Case No. U-14707 is on file with the Commission and is a matter of public record. In that regard, the testimony is properly admitted under MRE 803(8) as a hearsay exception. Moreover, Mr. Lorden's testimony made on behalf of Wisconsin Electric, the parent company of Edison Sault, is admissible on the basis that it constitutes an admission under MRE 801(d)(2). See *St. Clair Intermediate School Dist v Intermediate Education Ass'n*, 458 Mich 540, 561-62; 581 NW2d 707 (1998) (discussing agency relationship between parent and subsidiary corporations).

7. Last, Edison Sault's contention that Mr. Lorden's testimony is hearsay is extremely disingenuous given its counsel's agreement that, if the testimony is deemed relevant "Edison Sault will agree to bind the limited testimony in so that Mr. Lorden is not burdened [by having to appear]." (Exhibit "A"). The communication attached as Exhibit "A" was preceded by a telephone call from Mackinac Island's counsel to Edison Sault's counsel advising that Mackinac Island would otherwise subpoena Mr. Lorden to appear at the hearing in this matter. For Edison Sault to now take the position that the testimony is hearsay because Mr. Lorden is not testifying in person is nothing short of outrageous. Edison Sault, through its counsel, should not be permitted to whipsaw Mackinac Island's counsel by making empty promises.

WHEREFORE the City of Mackinac Island requests that this Commission enter an order denying Edison Sault Electric Company's to strike the pre-filed direct testimony of Thomas P. Lorden.

Respectfully submitted,

Fraser Trebilcock Davis & Dunlap, P.C.
Attorneys for the City of Mackinac Island

Dated: June 26, 2006

By:

Thomas J.
Waters

Digitally signed by Thomas J.
Waters
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Date: 2006.06.26 16:07:13 -04'00'

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48933

From: "Soneral, Christine Mason" <CMason@dykema.com>
To: "Tom Waters" <TWaters@fraserlawfirm.com>
Date: 6/15/06 9:24AM
Subject: Lorden

What argument/point do you intend to make with Lorden's testimony?

Christine Mason Soneral
Dykema
Capitol View
201 Townsend, Suite 900
Lansing, MI 48933

Notice from Dykema Gossett PLLC:

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DYKEMA

From: "Soneral, Christine Mason" <CMason@dykema.com>
To: "Tom Waters" <TWaters@fraserlawfirm.com>
Date: 6/22/06 2:59PM
Subject: Questions

Tom:

1. Yes, I know the discovery is due today and you will have it today. The person responsible for gathering the information returned from vacation this morning.

2. Yes, Edison Sault has objections to the Lorden testimony for a number of reasons. That being said, Edison Sault's primary objection will be that the testimony is not relevant. If the ALJ rules otherwise, Edison Sault will agree to bind the limited testimony in so that Mr. Lorden is not burdened.

I believe this answers your questions.

Christine Mason Soneral
Dykema
Capitol View
201 Townsend, Suite 900
Lansing, MI 48933

Notice from Dykema Gossett PLLC:

To comply with U.S. Treasury regulations, we advise you that any discussion of Federal tax issues in this communication was not intended or written to be used, and cannot be used, by any person (i) for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service, or (ii) to promote, market or recommend to another party any matter addressed herein.

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DYKEMA

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
EDISON SAULT ELECTRIC COMPANY for	)	Case No.: U-14703
authority to implement a power supply cost	)	(E-File Paperless)
recovery plan for the 12-month period	)	
ending December 31, 2006.	)	
_____	)	

PROOF OF SERVICE

The undersigned certifies that a copy of **City of Mackinac Island's Response in Opposition to Edison Sault Electric Company's Motion to Strike Pre-filed Direct Testimony of Thomas P. Lorden** was served on the ALJ and attorneys for the parties hereto, referenced on the attached Service List, by electronically mailing the same to said ALJ and attorneys at their appropriate e-mail addresses.

Angela L.
Sumsion

Digitally signed by Angela L.
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C = US, O = Fraser Law Firm
Date: 2006.06.26 16:07:28 -
04'00'

Angela L. Sumsion
Secretary to Thomas J. Waters

Dated: June 26, 2006

SERVICE LIST
CASE NO. U-14703

Administrative Law Judge

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