

January 10, 2007 (4:52pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

**CONSUMERS ENERGY COMPANY, NUCLEAR
MANAGEMENT COMPANY, LLC and
ENERGY NUCLEAR PALISADES, LLC AND
ENERGY NUCLEAR OPERATIONS.**

Docket No. 50-255

(Palisades Nuclear Plant, License No. DPR-20)

**REPLY OF PETITIONERS MICHIGAN ENVIRONMENTAL COUNCIL
AND PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN TO
APPLICANTS' RESPONSE**

I. Introduction

The Michigan Environmental Council ("MEC") and the Public Interest Research Group in Michigan ("PIRGIM"), Joint Petitioners in this case, file this reply to the January 3, 2007 response of the Applicants in this case.¹

Counsel for MEC and PIRGIM first received Applicants' response by regular mail on January 8, 2007.²

II. Petitioners MEC and PIRGIM fully meet all criteria for standing in this proceeding, as provided by the Atomic Energy Act, this Commission's regulations and decisions, and prevailing authority of the United States Supreme Court.

Applicants challenge the standing of MEC and PIRGIM to intervene and participate as full parties in these proceedings. However, Applicants fail to acknowledge Petitioners meet the standards and criteria for standing as provided by the Atomic Energy Act, this Commission's

¹ The Applicants' response opposes MEC/PIRGIM's joint petition to intervene, and the intervention by some (but not all) of the Michigan local units of government ("Local Units").

² Applicants' counsel did not serve their response to Petitioners' counsel by email. Thus, an extremely limited period of time has been provided for Petitioner MEC/PIRGIM's counsel to respond to Applicants' response.

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decisions, and by prevailing precedent of the United States Supreme Court and the federal courts.

Applicants' Response (pp 3-4) state that the following test for standing in these proceedings:

To establish standing, a Petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision in the proceeding. (cite omitted). The alleged injury must be one that will be (1) affected by the license transfer (2) is likely to be redressed by a favorable decision, and (3) that lies arguably within the 'zone of interests' protected by the governing statute. (cite omitted)

Petitioners first assert that the Commission decision in favor of recognizing MEC/PIRGIM's standing to intervene in this case is supported by the federal statutes applicable to this Commission, namely, the Atomic Energy Act. Sections 11(s) and 189 of the Atomic Energy Act, 42 U.S.C. 2014(s) and 42 U.S.C. 2239, establish congressional intent that parties such as MEC and PIRGIM should be recognized as having participatory rights in this Commission's proceedings, and particularly with respect to matters so directly associated with the interests of MEC and PIRGIM, and their respective Michigan organizational members and citizen members.

Second, MEC/PIRGIM fully meets the test for standing that Applicants describe in their response. This test is virtually identical to the test for standing utilized in Michigan Public Service Commission ("MPSC") agency proceedings, based upon state and federal court decisions.³ Despite active challenges by utilities to MEC and PIRGIM standing under this criteria, the Administrative Law Judges and the MPSC have recognized MEC and PIRGIM's standing in all of the numerous cases wherein MEC and PIRGIM have intervened at the MPSC.

³ (E.g. *Drake v Detroit Edison*, 453 F Supp 1123 (WD Mich 1978); *Association of Data Processing Service Organizations, Inc v Camp*, 397 US 150, 90 S Ct 837, 25 L Ed 2d 184 (1970); *Lujan v Defenders of Wildlife*, 504 US 555, 112 S Ct 2130; 119 L Ed 2d 351 (1992); *Lee v Macomb Cty Bd of Com'rs*, 464 Mich 726; 629 NW2d 900 (2001); *Friends of the Earth v Laidlaw*, 528 US 167; 120 S Ct 693; 145 L Ed 2d 610 (2000).

Most of these cases have involved issues concerning nuclear plant decommissioning funds, efforts to enforce the protection of SNF fees collected from ratepayers to provide for SNF disposal, advocacy of establishing better protection of decommissioning trusts and to establish an SNF disposal and SNF site decommissioning trusts, among other issues.

In a recent case, MPSC Case No. U-13771, the Administrative Law Judge reviewed the facts applicable to MEC/PIRGIM, and state and federal law, and found conclusively that MEC and PIRGIM had standing to participate in MPSC proceedings on these issues.⁴ The ALJ found that MEC and PIRGIM comprise persons and organizations directly affected by these issues, that MEC and PIRGIM represented persons to be impacted by the potential decisions in the case, and that MEC and PIRGIM fell within the zone of interests covered by applicable statutes. These findings were made following extensive briefing by the parties concerning standing issues, and the filing of documents including affidavits submitted by both MEC and PIRGIM (copies attached hereto as Appendix Exhibit A),⁵ and also following hearing arguments. Also attached hereto (as Appendix Exhibit B) is a recent website listings of the various organizations making up MEC and PIRGIM. MEC and PIRGIM have been involved in numerous MPSC and Michigan court cases, many of which are ongoing, relative to these and other issues.⁶ MEC and PIRGIM specifically request that the Commission permit MEC and PIRGIM to amend their pleadings, or

⁴ March 20, 2005 Proposal For Decision of the Administrative Law Judge in MPSC Case U-13771, pp 18-40.

⁵ See attached Affidavit of MEC Policy Director James Clift filed in MPSC Case No. U-13771 dated July 10, 2003, and attached Affidavit of PIRGIM's then Director, Brian Imus, filed in MPSC Case No. U-13771, dated July 10, 2003, describing their organizational interests.

⁶ The cases involving CECo include MPSC Case Nos. U-13917, U-13917-R, U-14274, U-14274-R, U-14150 (decommissioning), U-13771 (complaint regarding decommissioning and SNF disposal remedies and fund protections), *MEC/PIRGIM v MPSC and CECo*, Michigan Court of Appeals Docket No. 264860).

attachments hereto, in the event that the Commission desires further information of a factual nature concerning standing.

Applicants' response also fails to acknowledge that MEC/PIRGIM have been designated by a Michigan state agency to represent Michigan ratepayers in these proceedings, a factor that should be considered for standing purposes under this Commission's rules in a similar way that an intervention by a local government or state is considered. ME/PIRGIM have been authorized grants established by an agency of the State of Michigan to participate in MPSC and court cases, and also specifically this NRC Docket (and FERC dockets) related to the issues raised by Applicants' proposed transactions. In this respect, the Michigan state agency, (the Michigan Utility Consumer Participation Board) has recognized MEC and PIRGIM as an advocate for Michigan's residential citizen members to advance public interest issues concerning the proposed transactions.⁷

Contrary to Applicants' intimations, MEC and PIRGIM here seek to focus specifically on public health and safety issues subject to this Commission's jurisdiction, and to ensure that the transferee of the proposed license possesses adequate financial qualifications, and has provided adequate financial assurances, to carryout all responsibilities under the license and under regulations of this Commission (including the proper decommissioning of the Palisades Nuclear plant, completion of the decommissioning of the Big Rock nuclear plant, and the proper disposal of SNF and the decommissioning of SNF sites at both the Palisades and Big Rock plant sites).

⁷ Applicants' claim that MEC and PIRGIM have not demonstrated that the requisite authority for intervening in this case has been given is also spurious in this context. No "proofs" regarding MEC and PIRGIM's authorization to intervene should be necessary. In this respect, Applicants have not provided any certifications from their counsel that they have been authorized to intervene on behalf of their entities. On a level playing field, no further requirement should be required of proposed intervenors in this regard, unless the same requirement is attached to the Applicants. If requested, however, this can be provided.

MEC and PIRGIM also assert in this case that the proposed license transferor, including Consumers Energy and its parent company, CMS Energy, must also continue to share in the financial risks and costs, and to buttress financial assurances regarding the disposal of SNF, and the decommissioning of SNF sites and nuclear plants, given their long history of operation of the Big Rock and Palisades nuclear plants, and their generation of substantial amounts of SNF which remain on sites adjacent to Michigan shorelines and communities. This is particularly true in view of the fact that CECo has collected from ratepayers more than \$32 million per year, from the years 2000 – 2003, for nuclear plant decommissioning of the Big Rock plant, (which revenue collections continued at the same level in 2004 and 2005), which funds CECo never transferred or deposited into the Big Rock nuclear plant decommissioning fund.⁸ CECo has thus charged ratepayers substantial sums for the specific purpose of nuclear plant decommissioning, but has failed to fully fund the decommissioning collections in the decommissioning trust funds. This failure adds to the responsibility of CECo and its parent company to continue to share in all financial risks and assurances related to the decommissioning of SNF sites and nuclear plant sites. This Commission should assist the Michigan regulatory authority and Michigan ratepayers in requiring the deposit of said funds for the purpose for which they were collected. MEC and PIRGIM have further asserted in MPSC cases, and in this case, that CECo has collected \$148 million of principal (and accumulated interest), in the form of SNF fee debt, for pre-April 1983 nuclear generation, expressly as SNF fees for SNF disposal, which CECo has not deposited in the Nuclear Waste Fund, and which exists at CECo only as a bookkeeping entry and not as a separate account. MEC and PIRGIM have advocated for the establishment of a separate external interest bearing “SNF Disposal and SNF Site Decommissioning Trust,” to be regulated by the MPSC, to

⁸ Prefiled testimony of MEC/PIRGIM witness William Peloquin in MPSC Case U-14992, dated December 20, 2006.

ensure the deposit of said \$148 million to provide additional assurance for the eventual disposal of SNF and decommissioning of SNF sites.⁹ Failure of CECo to provide for adequate security, and to ensure preservation of said SNF fee debt collected from Michigan ratepayers, adds to the necessity for this Commission and the MPSC to cooperatively require that CECo and CMS Energy continue to share in financial assurances that full SNF disposal, and SNF site and nuclear plant decommissioning, will be accomplished.

The issues that MEC and PIRGIM have raised before the MPSC, and before this Commission in their intervention petition, are aimed at the respective jurisdictional duties and functions of the MPSC and the NRC. MEC and PIRGIM in this NRC case seek to focus upon issues relevant to this Commission's jurisdiction to promote and protect public health and safety with respect to nuclear energy, and to assure proper decommissioning of plant and SNF sites. MEC and PIRGIM's efforts in this regard also comport fully with the underlying purposes of MEC and PIRGIM as organizations to promote public health, to promote Michigan's environment, to provide for enhanced consumer protection, and to promote public interest issues and remedies on behalf of their Michigan organizations and members. As stated in MEC/PIRGIM's intervention petition in this case, these long-established missions and purposes also support MEC/PIRGIM's "organizational standing" to participate as parties in this case.

⁹ Prefiled testimony of MEC/PIRGIM expert Ronald C. Callen in MPSC Case U-14992, dated December 20, 2006; Testimony of Ronald C. Callen in MPSC Case U-14150 (CECo decommissioning), dated January 10, 2005, and March 16, 2005, and MEC/PIRGIM Briefs in U-14150.

III. Applicants' response fails to provide sufficient grounds for a determination that Applicants' possess adequate financial qualifications to receive a license transfer (absent protective conditions), and have failed to provide for adequate financial assurances that the public health and safety will be protected by approval of the requested license transfer.

MEC and PIRGIM refer the Commission to their petition to intervene in this case in support of their argument that the Applicants have failed to demonstrate that the proposed successor to the license of the Palisades nuclear plant (and to licenses for the ISFSI sites at Big Rock or Palisades) possess adequate financial qualifications to undertake the responsibilities under the Atomic Energy Act and the NRC regulations, and secondarily, that the Applicants have failed to demonstrate that adequate financial assurances will be provided to ensure the undertaking of all responsibilities of a license holder under the provisions of the Atomic Energy Act and the NRC's regulations.

MEC and PIRGIM assert that the failure by CECo to fund its Big Rock decommissioning trust with many scores of millions of dollars collected from ratepayers for that express purpose, contrary to the intent of MPSC orders, and CECo's failure to provide any preservation or security for the SNF fee debt that has been collected from Michigan ratepayers for the express purposes of SNF disposal, demonstrate that CECo and its parent company, CMS Energy, must be required to continue to share in the provision of financial assurances needed as a condition of any license transfer. This is necessary to ensure that proper decommissioning of the nuclear plants and SNF sites, and SNF disposal, will be accomplished.

The continuing joint responsibility of CECo and its parent company to the financial assurances for accomplishing these tasks is also contemplated by NRC regulations which can provide for a combination of approaches or options for obtaining the necessary financial

assurances (i.e. an external trust or sinking fund, combined with corporate guarantees, sureties, performance bonds, insurance, etc.).

This Commission should also require a much greater demonstration of the financial qualifications of the proposed transferee, ENP, a limited liability corporation, prior to any approvals herein. This Commission should also require, in advance, substantial financial assurance commitments by ENP's parent company, Entergy, such as guaranteed letters of credit, surety bonds, and corporate guarantees, etc, to be combined with the continuing financial assurance guarantees from CECo and CMS Energy, as noted above. This Commission should also require that CECo be required to place in trust the funds it has collected for decommissioning and SNF disposal, or at minimum, act in a manner that assists with this remedy at the state level.

Applicants also erroneously claim that they have provided adequate documents to establish the necessary financial assurance requirements. Applicants' response, p 12, states in part:

. . . The Petitioners acknowledge that they have not examined the Applicant's five year projected revenues and costs for ENP contained in the Application. . . .

The Applicants have complied with the requirements of 10 CFR 50.33(f) in every respect. . . . a projected five year financial statement for Entergy Nuclear Palisades was included as part of the application. (Application, Enclosure 7). An Applicant satisfies the Commission's financial qualification rule if it provides a cost and revenue projection for the first five years of operation that predicts sufficient revenue to cover operating cost. (cites omitted).

Applicants' response is illogical and hopelessly circular. The Applicants' referenced financial statements for their limited liability corporation were all redacted, based upon a largely irrelevant argument that public disclosure of said documents, and provision of same to potential parties, would harm their "competitive position". However, the Applicants in essence are trying to undertake a "sale and lease back" transaction which is subject to no competition, in a context in

which the proposed transferee is a newly formed, highly leveraged limited liability corporation having no initial assets. Promises of a parent company providing some unspecified line of credit, in a minimal amount of \$25 million, at such future time, "if working capital is necessary" is an anemic presentation of any financial assurances equivalent to the immense responsibilities involved with the proposed transfer of this nuclear plant and the two SNF sites. Apparently, Applicants believe that the Atomic Energy, and the NRC administration of its regulations, are so narrowly and isolatedly administered, that interested parties are to merely accept vague assertions by the Applicants. This cannot possibly be the essence of this Commission's administration of the Act, given the immense interest that the proposed intervenors have with respect to these Michigan based facilities. Quite clearly, the Petitioners could not have examined Applicant's five year projected revenues and costs for ENP since they have been redacted and have not been provided to the Petitioners. Applicants should be estopped from claiming that they have shown the necessary financial assurance qualifications in this context. Otherwise, the entire process is simply one of total prejudgment, based upon no publicly disclosed information.

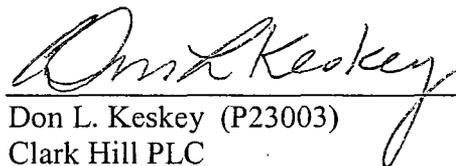
IV. Conclusion and Relief

For the reasons stated, the joint petitioners, the Michigan Environmental Council and the Public Interest Research Group in Michigan, respectfully request that they be admitted as full party intervenors in this case docket, and further, that an adjudicatory evidentiary hearing be held to fully examine the contentions raised in their pleadings, and any subsequent amendments that may supplement these contentions based upon discovery and receipt of further needed information. MEC and PIRGIM also adopt and incorporate by reference the contentions made by the Local Units in this case, and request an extension of time in the case schedule, a refile by applicants, and a period of discovery, prior to hearings. MEC/PIRGIM also request the right to

amend or supplement this Petition after the requisite information is provided by Applicants.
MEC/PIRGIM request such further and consistent relief which is lawful and reasonable.

MICHIGAN ENVIRONMENTAL COUNCIL,
PUBLIC INTEREST RESEARCH GROUP IN
MICHIGAN

By Their Counsel:



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DATED: January 10, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

CONSUMERS ENERGY COMPANY, NUCLEAR
MANAGEMENT COMPANY, LLC and
ENERGY NUCLEAR PALISADES, LLC AND
ENERGY NUCLEAR OPERATIONS.

Docket No. 50-255

(Palisades Nuclear Plant, License No. DPR-20)

APPENDIX EXHIBIT A

TO

REPLY OF PETITIONERS MICHIGAN ENVIRONMENTAL COUNCIL
AND THE PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN TO
APPLICANTS' RESPONSE

DATED JANUARY 10, 2007

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Formal Complaint of the MICHIGAN ENVIRONMENTAL COUNCIL, PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN and MICHIGAN CONSUMER FEDERATION, for Commencement of a Generic Investigation and Contested Case, for Review and Audit of Books and Records, for Establishment of Separate Additional External Nuclear Plant Site Decommissioning Trusts, and for Adoption of Additional Ratemaking Remedies Relating to Spent Nuclear Fuel (SNF) Fees and Costs Collected in Rates by Nuclear Utilities Serving Michigan Including CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, INDIANA MICHIGAN POWER COMPANY/AMERICAN ELECTRIC POWER, WISCONSIN ELECTRIC POWER COMPANY, and WISCONSIN PUBLIC SERVICE CORPORATION.

Case No. U-13771

AFFIDAVIT OF JAMES P. CLIFT

STATE OF MICHIGAN)
)
COUNTY OF INGHAM) ss.

I, JAMES P. CLIFT, being first duly sworn, deposes and says as follows:

1. I am the policy director of Michigan Environmental Council ("MEC"), a broad-based state-wide organization or association comprising over 64 environmental, public health, and public interest organizations and 200,000 citizen dues paying members in Michigan.

2. A member organization of MEC is the Public Interest Research Group in Michigan ("PIRGIM"), which is also a separate broad-based, state-wide, non-profit organization

comprising approximately 10,000 dues paying members which is involved in public interest and consumer protection issues.

3. I concur in the descriptions of the three organizations joining in the Complaint in this case, as stated in paragraphs 1-6 of the Complaint (p 3-6), and specifically with respect to MEC and PIRGIM.

4. A more complete description of MEC and PIRGIM is available at their website addresses. The website address for MEC is (www.mecprotects.com). PIRGIM's website address is (<http://pirg.org/pirgim>). A complete list of the organizations comprising MEC is available on its website. As can be seen from this list, MEC is comprised of a number of active organizations located throughout Michigan which are involved in public interest issues regarding environmental protection and conservation, and including issues related to consumer protection and utility matters. MEC is also comprised of a number of broad-based organizations having large numbers of citizen members on a state-wide basis, such as the American Lung Association of Michigan, Clean Water Action Coalition, League of Women Voters of Michigan, Michigan Audubon Society, PIRGIM, the Sierra Club, among several other organizations.

5. As policy director of MEC, and in support of MEC and PIRGIM's response to respondent utilities in this case, I have contacted some of the organizations within MEC, and have verified that they have citizen ratepayers within the service territories of all five (5) respondent utilities. I am also fully aware of the activism of these organizations relative to environmental, energy, and public interest issues. I believe that the various organizations of MEC and PIRGIM have numerous citizen ratepayers located within the service territories of the respondent utilities.

6. The following are but just a few examples of MEC ratepayers located within each utility's service territory:

a). **Consumers Energy Company:**

American Lung Association – Lansing

Clean Water Action – Grand Rapids, East Lansing, Clinton Township

Environmentally Concerned Citizens of South Central Michigan – Hudson

Kalamazoo Environmental Council – Kalamazoo

Lone Tree Council – Bay City

b). **Detroit Edison Company:**

Detroiters Working for Environmental Justice – Detroit

Detroit Audubon Society – Holly

Ecology Center – Ann Arbor

Local Motion – Ann Arbor

Michigan League of Conservation Voters – Ann Arbor

c). **Indiana Michigan Power Company/American Electric Power:**

One of our member groups is the Michigan Organic Food and Farm Alliance (“MOFFA”). MOFFA has one representative on the MEC Board of Directors; Merrill Clark. Ms. Clark is a resident of Cassopolis, Michigan, and is a customer of AEP. Ms. Clark has been active in a number of environmental and energy issues in the region including the recent proposal for a natural gas plant to be located in Niles, Michigan. Another one of our member groups is the Lake Michigan Federation with offices located around Lake Michigan. They have been active in a number of energy issues including the short and long-term storage of high level radioactive waste. They were involved in extensive litigation during the early 1990's regarding the issue of dry cask storage at Consumers Energy's Palisades Nuclear Power Plant, located on Lake

Michigan, not far from IM's Cook Nuclear Plant; See, *Kelley et al. and Lake Michigan Federation, v Selin (U.S. Nuclear Regulatory Commission) and Consumers Power Company*, 42 F 3d 1501 (1995). The Federation estimates that it currently has members of that organization that are customers of AEP. For purposes of IM Power/AEP's electric restructuring case, U-12652, in which MEC/PIRGIM intervened, the Lake Michigan Federation reported that they had 31 members in the service territory of AEP.

Other of the large member groups having citizens located in IM Power's service territory is the West Michigan Environmental Action Council, headquartered in Grand Rapids, Michigan, and the Kalamazoo Environmental Council, Kalamazoo, Michigan which are involved in environmental issues in the western portion of the state.

d). **Wisconsin Electric Power Company:**

Upper Peninsula Environmental Council – Marquette

Citizens for Water and Clean Sky – Bark River

Sierra Club – Lansing (statewide membership)

e). **Wisconsin Public Service Corporation:**

Complainants intervened in WPSCorp's pending electric rate case, U-13688; for purposes of that case, and as of April 26, 2003, a member organization, the Sierra Club, by itself, confirmed 14 member customers within the service territory of this utility.

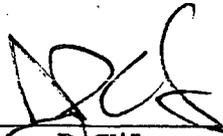
7. MEC and its member organizations also continue to recruit new members around the state on a routine basis.

8. MEC's participation in this case is authorized under MEC procedures. MEC has the full support of these organizations in pursuing intervention in MPSC proceedings regarding cost and rate issues related to spent nuclear fuel (SNF) fees, storage, and disposal, and the

protection of ratepayer collected funds for these purposes, and also to other issues related to protection of ratepayers and the environment.

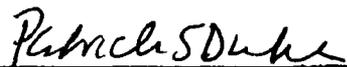
9. If called upon as a witness, I can testify competently to the facts contained herein.

DEPONENT FURTHER SAYETH NOT.



James P. Clift

Subscribed to and sworn before me
this 10 day of July, 2003



Patrick B. Diehl, Notary Public
Ingham County, Michigan
My Commission Expires: March 15, 2005

PATRICK S. DIEHL
NOTARY PUBLIC INGHAM CO., MI
MY COMMISSION EXPIRES Mar 15, 2005

PIRGIM's headquarters are located at 122 South Main Street, Suite 370, Ann Arbor, Michigan 48104.

2. I concur in the descriptions of the three organizations joining in the Complaint in this case, as stated in paragraphs 1-6 of the Complaint (p 3-6); and specifically with respect to PIRGIM.

3. A more complete description of PIRGIM is available at its website address (<http://pirgim.org>).

4. I believe that PIRGIM has numerous citizen ratepayers located within the relevant service territories of the respondent utilities. For example:

(a) Detroit Edison serves Lapeer, St. Clair, Oakland, Macomb, Washtenaw, Wayne and Monroe Counties. PIRGIM has about 6,970 members in these counties.

(b) Consumers Energy serves much of central Michigan. PIRGIM has members in Calhoun, Jackson, Ingham, and Shiawassee Counties as well as State Senate Districts 16, 32, 33 and 35. The total number of members in these areas is 1,312.

(c) IM Power (American Electric Power) services Southwestern Michigan. PIRGIM has members in Van Buren, Cass and Berrien Counties. Our total membership in this area is 95.

(d) Wisconsin Public Service Corporation's and Wisconsin Electric Power Company's service areas are in Michigan's Upper Peninsula. PIRGIM has 131 members in Senate District 38 which is in this service area.

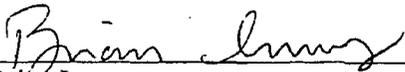
5. PIRGIM also continues to actively recruit new members on a state-wide basis, which includes the service territories of all five (5) respondent utilities.

6. PIRGIM fully supports, and has authorized, this case action, and also interventions in other cases before the MPSC dealing with spent nuclear fuel (SNF) fees, storage,

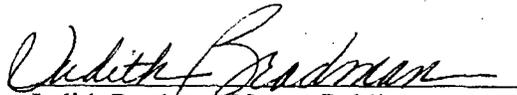
and disposal, and the protection of ratepayer collected funds for these purposes, and also to other issues related to protection of ratepayers.

7. If called upon as a witness, I can testify competently to the facts contained herein.

DEPONENT FURTHER SAYETH NOT.


Brian Imus

Subscribed to and sworn before me
this ~~10th~~ day of July, 2003


Judith Bradman, Notary Public
Ingham County, Michigan
My Commission Expires: May 18, 2004

UNITED STATES OF AMERICA
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(Palisades Nuclear Plant, License No. DPR-20)

APPENDIX EXHIBIT B

TO

REPLY OF PETITIONERS MICHIGAN ENVIRONMENTAL COUNCIL
AND THE PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN TO
APPLICANTS' RESPONSE

DATED JANUARY 10, 2007

MICHIGAN ENVIRONMENTAL COUNCIL

A Collective Voice for Our Environment

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- Staff
- Funders
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VICTORIES

ISSUES

ABOUT MEC



The Michigan Environmental Council

A BRIEF HISTORY

Mission Statement: The Michigan Environmental Council, a coalition of environmentally concerned organizations, protects Michigan's natural resources and promotes a healthy environment for this generation and those to come.

The Michigan Environmental Council (MEC), a coalition of environmental and public health organizations, was founded in 1980 by six organizations - the Michigan and Detroit Audubon Societies, the Flint Environmental Action Team, the Sierra Club's Mackinac Chapter and the East and West Michigan Environmental Action Councils - to represent the environmental community in public policy debates and to coordinate the flow of information originating from the State Capital. Since then, the organization has built a strong staff with increasing capacity and greater prominence in the governmental and environmental policy making arena. Our coalition has grown to include almost 70 member groups and 11 full-time staff.

In the early 1980s, MEC was instrumental in strengthening the regulation of toxics. Michigan was a leader in using peer-reviewed scientific information relating to the effects of toxic chemicals on human health, and MEC's contribution led to the regulation of toxic substances being discharged into our waterways.

MEC also played a key role in the 1980s in establishing health-based air quality standards. We pushed state officials to develop a solid waste management hierarchy and drafted 1985's Clean Michigan Fund recycling legislation. We helped devise a toxics reduction strategy for the Great Lakes and opposed Great Lakes water diversion. Staff appeared before state commissions on a regular basis - including the Air Pollution Control Commission, the Water Resources Commission and the Natural Resources Commission - to testify regarding toxics in fish and other environmental and public health issues. We also supported then-Governor Jim Blanchard's efforts to create an Office of the Great Lakes and a state Council on Environmental Quality, and we organized the successful campaign to pass landmark "polluter pay" legislation - sponsored by then-Senator Lana

Pollack - as well as an \$800 million environmental bond proposal in 1988.

The decade of the 1990s saw MEC's work expand from proactive policy making to include defending existing standards and protections. An anti-environmental administration sought to roll back or gut a number of environmental protections (including Pollack's "polluter pay" law, which saved taxpayers \$100 million before it was repealed in 1995), and MEC was forced to work to lessen the harmful impacts of bad state environmental policies while at the same time continuing to develop and promote bold new policy ideas.

Our efforts to defend and enhance our environment have been successful: we helped organize a successful legal strategy that resulted in a critical state Supreme Court decision upholding environmental laws; authored a new "right to know" program which enables citizens to obtain community-level information on emissions and compliance with environmental laws; helped block the restart of an old, dirty, coal-fired power plant which would have threatened public health and exacerbated the global greenhouse gas problem; helped change a "polluter secrecy law" that gave polluting companies and governments a shield from inspection and prosecution; and killed "takings" legislation that would have gutted laws protecting wetlands, sand dunes and other vital and sensitive land resources. We also worked with an ad-hoc committee to make Michigan's 1998 and 1999 fish consumption advisories more protective of women and children, successfully pressuring state officials to reverse their position.

MEC continues to leave its mark on state environmental policies and programs. We played a major role in reshaping the Engler Administration's economic development bond proposal into a true environmental proposal, adding \$90 million for water quality improvement and protection and \$20 million for pollution prevention. The proposal was approved by 63 percent of voters in November of 1998. More recent accomplishments include the creation of a Low Income Assistance and Energy Efficiency Fund which will provide up to \$300 million to increase energy efficiency in Michigan, reducing harmful air and water pollution while protecting low income ratepayers from high heating bills.

MEC is now widely recognized as the voice of Michigan's environment in ways its founders could not have anticipated back in 1980. We provide training and support for our member groups; organize workshops and foster partnerships among environmental organizations and other communities, including children's advocates and faith-based organizations; and conduct groundbreaking policy research and analysis, among other efforts. MEC is often the first point of contact when state or national media seek the views of Michigan environmentalists. We are committed to promoting a healthy environment for this generation and those to come.

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MICHIGAN ENVIRONMENTAL COUNCIL

A Collective Voice for Our Environment

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MEMBER GROUPS

MEC is growing! Six groups founded MEC in 1980. Today we are at over 70 member organizations. Some are affiliates of national organizations; others are grassroots groups that work at the community level. All of them supply the strength and support MEC needs to assure protection of our environment.

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YOU CAN MAKE A DIFFERENCE WITH MEC

The Michigan Environmental Council (MEC) provides a collective voice for the environment at the local, state and federal levels. Working with our member groups and their collective membership of nearly 200,000 residents, MEC is addressing the primary assaults on Michigan's environment; promoting alternatives to urban blight and suburban sprawl; advocating for a sustainable environment and economy; protecting Michigan's water legacy; promoting cleaner energy; and working to diminish environmental impacts on children's health.

Since our inception in 1980, MEC has been responsible for countless victories for our environment. Join us in the fight. You can make a difference with MEC!

LAND STEWARDSHIP

We support policies that foster a new approach to Michigan's land resources. This approach promotes sustained, healthy ecosystems and biological diversity. It will also reverse trends that now favor urban decay and sprawl and the loss of open spaces, while providing momentum for revitalization of cities, the protection of natural features and land dependent economies (farming, forestry and recreation), and the establishment of new patterns of development as alternatives to low density, land consumptive sprawl. We seek a Michigan Smart Growth program which includes:

- * Statewide land use goals and coordinated planning among all levels of government;
- * A full complement of growth management and urban revitalization tools for local governments including transfer of development rights (TDR), purchase of development rights (PDR), urban growth boundaries, Urban Service Districts, geographic information systems regional revenue sharing and a streamlined tax reversion process to promote urban redevelopment;
- * A framework of state programs (tax incentives, grants, infrastructure investment, etc.) to encourage the use of the tools or plan in accordance with the goals;
- * Shifts in transportation funding priorities to maintain Michigan's existing road system instead of building new highways and paving more rural roads, and to provide greater emphasis on public transportation;
- * Economic impact statements that will provide information needed to stop public subsidies for sprawl; and
- * New models of cooperation and planning based on local demonstration projects undertaken by our members.

CHILDREN'S HEALTH

We favor state laws and policies at all levels of government that protect children from toxic pollutants and other environmental risks. Children's unique metabolism, sensitivity and behavior place them at special risk of illness and physical and mental impairments from pollution. Low-income and minority children are particularly at risk because they tend to live in more polluted conditions. We seek:

- * State laws that base pollution standards on protection of children, not adults;
- * An aggressive state program to prevent environmental lead poisoning of children;
- * Public health information that enables parents and guardians to protect their children from risks through consumption of contaminated sportfish, inhalation of air fouled by smog and soot, sewage at public beaches, and exposure to toxic substances in consumer products,
- * Changes in DEQ practice to consider the cumulative effects of all air pollution sources, not just a single proposed new source, on the health of children and other sensitive populations;
- * Promulgation of rules required by Michigan's Safe Drinking Water Act to provide timely public health advice on the effect of drinking water contaminants on the health of children and other sensitive populations; and
- * An overall state emphasis on prevention rather than control of pollution, in order to avoid unnecessary risk to children.

SUSTAINABLE ENVIRONMENT, SUSTAINABLE ECONOMY

We support policies and practices that contribute to a sustainable economy and a sustainable environment. Policies that promote clean air, clean water, and recreational resources improve quality of life and make Michigan and its communities both more attractive and more profitable. We seek:

- * To assure that electric industry restructuring provides incentives for cleaner air and new green industries by funding energy efficiency and wind, solar and other clean power options, while decreasing the amount of electricity generated by burning dirty coal;
- * To encourage the auto industry, labor, and vehicle buyers to support innovative automobile technology that will protect Michigan's leading industry while helping curb emissions that jeopardize human health and foster global warming;
- * Prudent investments in pollution prevention programs that enable businesses to become more competitive and cleaner at the same time;
- * Passage of legislation creating a heritage program license plate to provide funding for natural heritage programs that educate citizens about, and assure protection of, Michigan's legacy of diverse wildlife and landscapes; and
- * To provide state tax incentives for environmentally progressive actions by corporations and individuals, including the reduction of toxic chemical use, full cleanup of contaminated sites, manufacture of high-efficiency alternative technology automobiles, and the manufacture of products from recycled materials.

OPEN GOVERNMENT

Once the country's leader in both environmental protection and citizen participation in decision making, Michigan now lags behind the nation in both. Too many decisions affecting public health and the environment are now made behind closed doors to benefit special interests rather than the public as a whole. We seek:

- * Reform of the DEQ's decision making process to promote environmental justice for all citizens through a fair, open public participation process; Creation of an Environmental Quality Commission of citizens to oversee the DEQ, which was itself created without citizen comment or participation;
- * Legislation to protect the public's right to know and understand the condition of the environment through collection and reporting of data on our air, water and land quality;
- * Reinstatement of the state's toxic chemicals public reporting program, which was unilaterally suspended by the DEQ in 1995; and
- * Careful watch-dogging of spending priorities for the \$675 million voter-approved 1998 environmental bond issue to assure that promises about the use of the money that were made to taxpayers are kept.

PROTECTING OUR WATER

No resource defines Michigan like water. Our state is surrounded by four of the world's largest lakes and the Great Lakes hold 80% of North America's surface freshwater; we have 11,000 inland lakes, 5.5 million acres of wetlands and 3,288 miles of Great Lakes shoreline as well as abundant, high quality groundwater. Michigan's water legacy is at risk from current policies which promote degradation and wetland destruction. We seek:

- * Spending of \$90 million in water quality funding from the 1998 bond to protect inland lakes, clean up Lake St. Clair, and keep the state's promises to make Lake Superior a water model for the world;
- * Reform of the DEQ's wetland program, which is troubled by allegations of bias toward wetland destruction, to assure protection of this critical resource;
- * Enactment of legislation to limit water withdrawals from rivers and from groundwater in order to protect high quality rivers and groundwater supplies;
- * Reform of the state's policies toward intensive agricultural facilities to protect rivers, lakes and public health from severe runoff; and
- * Strong policies to prevent new or increased diversions or commercial sales of Great Lakes water.

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Mission Statement

When consumers are cheated or the voices of ordinary citizens are drowned out by special interest lobbyists, PIRGIM speaks up and takes action. We uncover threats to public health and well-being and fight to end them, using the time-tested tools of investigative research, media exposés, grassroots organizing, advocacy and litigation. PIRGIM's mission is to deliver persistent, result-oriented public interest activism that protects consumers, encourages a fair, sustainable economy, and fosters responsive, democratic government.

PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN

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Energy Efficient Michigan

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What's New

On March 15, PIRGIM released a report showing that by passing energy-saving appliance standards, Michigan's Consumers would save over \$2.5 billion. [Read the press release.](#)

On March 7, PIRGIM Director Mike Shriberg testified before the Michigan Public Service Commission about the need to restart Michigan's energy efficiency programs. [Read PIRGIM's statement.](#)

How You Can Help:

[Ask Gov. Granholm](#) to help MI save money on natural gas.

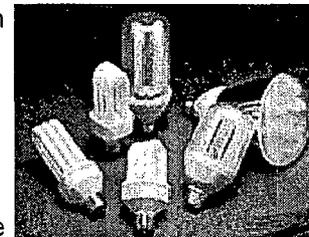
Brief Summary

With skyrocketing energy prices, increased reliance on foreign and out-of-state oil and natural gas, and increasing environmental destruction caused by our current energy path, the time is now to stop wasting energy in Michigan. Michigan's current energy path is supported by the coal, utility, and other industries, whose leaders mistakenly believe that the solution to our energy problems is more dirty power plants. These special interests have blocked meaningful policy changes and have been successful in securing huge subsidies for the fossil fuel industries long after they should have been able to compete without them.

Meanwhile, they have created and maintained barriers to prevent Michigan from using less energy. Yet, surveys repeatedly show strong support among Michiganders for energy efficiency, renewable energy and for decreasing our reliance on out-of-state fossil fuels. [More.](#)

Learn about PIRGIM's work with the [Energy Star Program.](#)

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PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

CONSUMERS ENERGY COMPANY, NUCLEAR
MANAGEMENT COMPANY, LLC and
ENTERGY NUCLEAR PALISADES, LLC AND
ENTERGY NUCLEAR OPERATIONS.

Docket No. 50-255

(Palisades Nuclear Plant, License No. DPR-20)

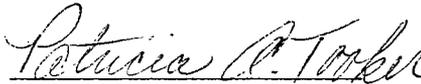
PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

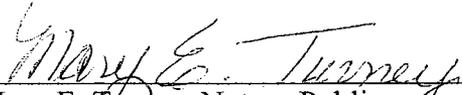
Patricia A. Tooker, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on January 10, 2007, she served a copy of the **REPLY OF PETITIONERS MICHIGAN ENVIRONMENTAL COUNCIL AND PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN TO APPLICANTS' RESPONSE**, upon:

SEE ATTACHED SERVICE LIST

Service was accomplished by depositing same in a regular United States Postal Service mail depository, enclosed in envelopes bearing first-class postage, fully prepaid and properly addressed and via electronic mail.


Patricia A. Tooker

Subscribed and sworn to before me
this 10th day of January, 2007.


Mary E. Turney, Notary Public
State of Michigan County of Ingham
Acting in Ingham County, Michigan
My Commission Expires: March 20, 2012

SERVICE LIST
DOCKET NO. 50-255

Secretary of the Commission
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001
E-Mail: HEARINGDOCKET@NRC.GOV

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CLARK HILL

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January 10, 2007

Secretary of the Commission
ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-Mail: HEARINGDOCKET@NRC.GOV

Re: In the Matter of Consumers Energy Company, Nuclear Management Company,
LLC, and Entergy Nuclear Palisades, LLC and Entergy Nuclear Operations
(Palisades Nuclear Plant, License No. DPR-20)
Docket No. 50-255

Dear Sir/Madam::

Attached is the email filing of the following:

1. January 10, 2007 cover letter
2. Reply Of Petitioners Michigan Environmental Council And Public Interest Research Group In Michigan To Applicants' Response
3. Proof of Service.

Please confirm by return email that you have received these documents for electronic filing.

Very truly yours,

CLARK HILL PLC



Patricia A. Tooker
Secretary to Don L. Keskey
Email: ptooker@clarkhill.com
Phone: (517) 318-3025

DLK:pat
Enclosures