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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****May 7, 2007****(Palisades Nuclear Plant, License No. DPR-20)**

**PETITION FOR RECONSIDERATION OF THE
MICHIGAN ENVIRONMENTAL COUNCIL AND THE
PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN**

The Michigan Environmental Council ("MEC") and the Public Interest Research Group in Michigan ("PIRGIM") file this Petition for Reconsideration of the Commission's April 26, 2007 order in this docket. MEC and PIRGIM request this Commission to grant this Petition for Reconsideration, and to grant MEC's and PIRGIM's intervention as a full participant in any hearings and follow-up procedures in this case.

MEC and PIRGIM request reconsideration of the Commission's order with respect to two (2) matters: (1) the order's discussion regarding the scope and nature of this adjudicatory proceeding; and (2) the order's finding that MEC and PIRGIM lack standing to participate in this case. MEC and PIRGIM also provide the Commission with updated information regarding its original contentions in this case, that have been verified by expert testimony filed in Michigan Public Service Commission ("MPSC") Case U-14992. The MPSC case incorporated many issues and relief requests necessary for Consumers Energy Company ("CECo") to sell or transfer

its Palisades and Big Rock facilities to Entergy Nuclear Palisades LLC (“ENP”), as owner, and to Entergy Nuclear Operations Inc. (“ENO”) as operator.

A. Scope of Proceedings

MEC and PIRGIM first request the Commission to reconsider its determination that this proceeding is limited to the transfer of licenses involving the Palisades nuclear plant, and the Palisades ISFSI, and not also the ISFSI at the former site of the Big Rock nuclear plant. In this respect, the sale or transfer of all of these facilities was undertaken in a unified comprehensive manner, with many interlocking and integrally related issues and cost considerations. MEC and PIRGIM thereby reasonably believed that the Commission would and could consider all of the relevant contentions and issues in a similar unified fashion in this case (50-255), or at least in consolidation with Docket 50-155.

In support of this position, MEC and PIRGIM first note that CECo undertook its entire transactional bid process in a manner that tied the Palisades sale (and entry into an associated Purchase Power Agreement (“PPA”), between the purchaser and CECo) to the transfer of the Big Rock ISFSI.

Second, the application filed by CECo before the MPSC in Case U-14992 incorporated one unified filing, and extensive testimony and exhibits, in support of the overall transaction including both the Palisades plant (and its ISFSIs) and the Big Rock ISFSI. This not only included the asset sale agreement (“ASA”), but also the PPA, and extensive testimony outlining the comprehensive unified nature of the transaction.

The applicant CECo in MPSC Case U-14992 also combined all of its relief requests or remedies that it sought from the MPSC in Case U-14992, on a unified basis, in order to proceed

with the sale and transfers of all of the Palisades and Big Rock facilities as one transaction.

CECo's application in this case involves multiple relief requests, as follows:

- Approval of a Purchase Power Agreement ("PPA") between CECo and Entergy Palisades LLC, a newly created limited liability company, pursuant to MCL 460.6j(13)(b) and other applicable law;
- Approval of the manner in which Consumers Energy's rates will be adjusted to remove the costs associated with ownership of Palisades and to incorporate the costs incurred pursuant to the PPA;
- Affirmation that the requirements imposed by the October 24, 2000 Order in MPSC Case No. U-12505 (the "Securitization Order") authorizing the securitization of Consumers' pre-2001 investment in Palisades have been satisfied;
- Approval of the proposed transfer of funds in the MPSC-jurisdictional decommissioning trust funds;
- Issuance of a certificate of convenience and necessity pursuant to 1929 PA 69 for CECo to supply station power to Palisades;
- Determination of Palisades as an "eligible wholesale facility" under Section 32(a) of the Public Utility Holding Company Act.

This Commission's order of April 26, 2007, page 6, also noted that the applicants in this

NRC proceeding (50-255) highlighted the unified nature of their application request:

. . . . The sales of the Palisades and Big Rock Point properties are part of a single transaction effectuated in the Asset Sales Agreement. As with the Palisades property, Entergy Nuclear Palisades would own and Entergy Nuclear Operations would maintain the Big Rock ISFSI. The Applicants in the instant proceeding have indicated that, under the Asset Sales Agreement, "the sale of each facility [the Palisades Plant and ISFSI, and the Big Rock Point ISFSI] is conditioned upon the sale of the other, and . . . that both will be treated together as a single transaction consummated on the same day."

Like the MPSC proceeding which evaluated all aspects of both the Palisades and Big Rock transactions in a unified fashion, the NRC Commission staff also undertook a joint review of the requested transfers of both the Palisades and Big Rock facilities. In fact, the staff analysis of the Big Rock application in NRC 50-155 was based in large part upon the analysis undertaken in NRC 50-255. For example, the "Safety Evaluation by the Office of Nuclear Reactor Regulation", dated January 22, 2007 in the Big Rock ISFSI Docket, 50-155, states in part:

This Safety Evaluation is to be conjoined with the Safety Evaluation dealing with the direct transfer of the license for Palisades Nuclear Plant, from Consumers Energy Company & Nuclear Management Company, LLC, to Entergy Nuclear Palisades, LLC & Entergy Nuclear Operations, Inc., based on an application dated August 31, 2006, (p 1).

....

Under the terms of the Asset Sale Agreement (July 11, 2006), in addition to the activities involving Big Rock and the Big Rock ISFSI, Consumers will sell, and ENP will purchase, the Palisades Nuclear Power Plant (Palisades), together with associated Palisades facilities and land. (p 2).

....

ENP will own and ENO will operate, both Big Rock and Palisades. As an operating nuclear facility, Palisades will produce revenue through power sales pursuant to its 15-year Power Purchase Agreement (PPA) with Consumers, in which Consumers commits to purchasing all of the output of Palisades. A copy of the PPA was submitted as part of this application for Big rock and the Big rock ISFSI.

In satisfaction of 10 CFR 50.33(f), the application contains a five year projected income statement for ENP. The five year projected income statement for Palisades is being submitted directly from ENP under separate cover, and is analyzed under the separate Palisades Safety Evaluation.

The revenues in the five year projected income statement for Palisades, are based on EP's sale of its generation, at prices established under the PPA. The costs associated with the operation and maintenance of Big Rock and the Big Rock ISFSI are included in the five year projected income statement for Palisades. The projected income statement shows that ENP's anticipated revenues from sales of energy and capacity from Palisades provide reasonable assurance of an adequate source of funds to meet ENP's anticipated operating and maintenance expenses for the Big Rock ISFSI. ENP and ENO, through Entergy Corporation, Palisades will have access to a line of credit of \$25 million from Entergy Corporation or another affiliated company. (pp 3-4).

....

The Big Rock Point Plant was shut down permanently in August, 1997. In 2006, Consumers completed decommissioning and

decontamination of the majority of land on the site. Any and all additional decommissioning expenses with this site shall be born by the licensee, through revenues derived from, but not limited to, the sale of electricity and capacity from Palisades. (p 4).

. . . It is anticipated that revenues from the sale of electricity from Palisades will be sufficient to fund the cost of decommissioning the Big Rock ISFSI. (p 4) . . .

Upon closing of the proposed sale, ENP will assume title to and financial responsibility for the spent fuel stored at the Big Rock ISFSI to the same extent as presently held by Consumers. . . . (p 4).

Similarly, the April 6, 2007 "Safety Evaluation by the Office of Nuclear Reactor Regulation" in the Palisades Docket (50-255) states in part:

The July 11, 2006 ASA also concerns the sale of the license for Big Rock Point Facility (Docket No. 50-155) and the Big Rock Point Independent Spent Fuel Storage Installation (ISFSI) (Docket No. 72-043), from Consumers to ENP and ENO. An application for approval of that direct transfer was filed on October 31, 2006. While the license transfer of Big Rock Point Facility/Big Rock Point ISFSI are being executed by a separate Order, certain analyses in this safety evaluation (SE) took into account the transfer of all of the licenses: Palisades, Big Rock Point Facility/Big Rock Point ISFSI. (p 1).

. . .

Based on the information in the application for transfer, the other documents cited above, and the evaluation above, the NRC staff finds that ENP's Projected Income Statement shows that the anticipated revenues from sales of energy and capacity from Palisades provide reasonable assurance of an adequate source of funds to meet Palisades' anticipated expenses, as well as the yearly operating expense for the Big Rock ISFSI, during the required five year period covered by the six year projections. The NRC staff finds that no further financial qualifications analysis or review is necessary.

Accordingly, the NRC staff has determined that ENP has provided reasonable assurance of adequate financial qualifications for a non-electric utility pursuant to 10 CFR 50.33(f).

MEC and PIRGIM proceeded in NRC 50-255 with the reasonable belief that all relevant contentions and issues dealing with both the Palisades and Big Rock facilities would be reviewed by the Commission in that docket, given the unified, comprehensive, and inseparable nature of CECo's negotiated bid process, its application and presentation before the MPSC, and the inter-tangling trade-offs that CECo accepted in order to proceed with the unified transaction involving the sale or transfer of all nuclear facilities at both Palisades and Big Rock.

B. Standing of MEC and PIRGIM

MEC and PIRGIM also request the Commission to reconsider its ruling denying standing to MEC and PIRGIM in this proceeding (April 26, 2007 Order, pp 7-12). The Commission order states the criteria for standing in a license transfer proceeding, as follows:

To demonstrate standing in a license transfer proceeding, the petitioner must

- (1) identify an interest in the proceeding by
 - (a) alleging a concrete and particularized injury (actual or threatened) that
 - (b) is fairly traceable to, and maybe affected by, the challenged action (*e.g.*, the grant of an application to approve a license transfer), and
 - (c) is likely to be redressed by a favorable decision, and
 - (d) lies arguably within the "zone of interests" protected by the governing statute(s).
- (2) specify the facts pertaining to that interest.

MEC and PIRGIM assert that they meet these standing tests. MEC and PIRGIM incorporate by reference the facts and information provided in its initial petition dated December 6, 2006, and in its reply dated January 10, 2007. In those pleadings, MEC and PIRGIM identified the numerous cases in which they have actively intervened before the Michigan Public

Service Commission, concerning nuclear plant decommissioning, spent nuclear fuel (“SNF”) fee and ISFSI costs, and ISFSI decommissioning issues. In those pleadings, MEC and PIRGIM also stated that they had pursued said interventions before the MPSC, the Michigan courts, and also before certain federal agencies, including participation in this docket, pursuant to an overall grant established by the State’s Utility Consumer Participation Board, under a provision of state law, MCL 460.6a-6m, etc.

Pursuant to MEC’s and PIRGIM’s missions and objectives, and that of their underlying member organizations and citizen members, MEC and PIRGIM have focused their case participation upon their interests concerning, and to seek protective remedies, to preserve decommissioning funds for their intended use, to preserve SNF fees for the intended purpose of accomplishing SNF disposal, and to obtain the decommissioning of SNF ISFSI sites, among associated issues relating to rates, consumer and environmental protection, including the protection of public health and safety. In MPSC case U-14992, MEC and PIRGIM presented extensive expert testimony establishing that CECo had collected from ratepayers some \$148 million (including interest) in SNF fees associated with pre-April 1983 nuclear generation, that CECo did not pay to the federal government’s Nuclear Waste Fund (“NWF”). Moreover, MEC/PIRGIM’s evidence established that said funds were unsecured on CECo’s books. MEC/PIRGIM recommended that the amount of said funds be transferred into an external interest bearing “SNF disposal and SNF decommissioning trust fund”.¹

In U-14992, MEC and PIRGIM also sponsored the expert testimony of William A. Peloquin, a CPA who has testified in scores of MPSC cases spanning approximately 30 years, who presented extensive testimony and exhibits establishing that CECo had collected \$100

¹ This evidence is found in the U-14992 proceedings, and is summarized in the portion of MEC/PIRGIM’s initial February 9, 2007 brief to the MPSC in that docket, attached as Exhibit A hereto (comprising expert testimony of Ronald C. Callen, T 1576-1620, Exhibits MEC-5, MEC-6, MPSC Case U-14992, January 24, 2007).

million in Big Rock decommissioning surcharges for the years 2001-2003, that CECo never deposited into the Big Rock nuclear decommissioning fund. CECo's failure to deposit the decommissioning surcharges into the Big Rock decommissioning fund resulted in a shortfall in that fund of approximately \$140 million.²

MEC and PIRGIM also assert that the CECo/ENP transactions involving the Palisades nuclear plant and Palisades and Big Rock ISFSIs also provided for CECo to pay ENP \$30 million upon closing to take over ownership and responsibility for the Big Rock ISFSI. Given the long delays in the federal SNF disposal program, and the threat of its non-success, and given the diminution of the financial resources that Michigan ratepayers had paid into CECo for Big Rock decommissioning and for SNF disposal, the NRC could and should require that the \$30 million payment be assigned to a trust fund to assure additional financial resources to assign toward the eventual disposal of SNF and the decommissioning of the Big Rock ISFSI site.

The above facts, established based upon extensive discovery, witness preparation and presentation in MPSC case U-14992, further buttresses MEC/PIRGIM's standing to participate in this proceeding. The above facts show that MEC and PIRGIM and their citizen ratepayer members who take service from CECo, have "a concrete and particularized injury (actual or threatened) in accordance with standing criteria (1)(a), Order, p 7. This injury exists in the form of substantial funds collected from CECo's ratepayers for SNF fees and for Big Rock decommissioning surcharges, which CECo has never deposited in either the NWF or the Big Rock decommissioning fund. The result is an unwarranted windfall to CECo, and the lack of adequate financial assurances that said funds could provide to ensure the decommissioning of the Big Rock site (which CECo claims is "under-funded" due, however, to CECo's failure to deposit

² Testimony of William Peloquin, U-14992, dated January 24, 2007, T 1526-1564, Exhibits MEC-1, MEC-2, MEC-3, MEC-4. Witness Peloquin's testimony concerning this issue, is summarized in MEC/PIRGIM's initial February 9, 2007 brief in U-14992, portions attached hereto as Exhibit A.

rate surcharges into the fund), and for use to provide for the proper disposal of SNF and for the decommissioning of the SNF ISFSIs at both Big Rock and Palisades. The importance of providing additional assurances from Entergy (including ENP, ENO, and its parent companies, and also CECo, and its parent CMS) is of increased importance due to the funding failures noted above.

MEC and PIRGIM assert in accordance with the above (and standing criteria (1)(b), Order, p7) that they and their citizen members and CECo ratepayers “are affected” by this Commission’s action (the grant of an application to transfer licenses for the Palisades nuclear plant, and the Palisades and Big Rock ISFSIs) because said license transfer operations provide the opportunity for this Commission to attach additional conditions or requirements to assure the long-term financial adequacy and existence of financial resources to ensure the proper decommissioning of the Palisades plant, and the two ISFSIs at Palisades, and the Big Rock ISFSI. In this sense, MEC and PIRGIM also meet the requirement (standing criteria (1)(c), Order, p 7) that MEC/PIRGIM’s concerns can likely be “redressed by a favorable decision” by the Commission. Given the threatened diminution of the ratepayers’ payments for SNF disposal and for Big Rock decommissioning, noted above, and the default in the federal SNF disposal program, this Commission could and should attach additional terms and conditions to the license transfers for both the Palisades plant and the ISFSIs to provide additional financial assurances. Said financial assurances could be in the form of the many various remedies that the Commission is empowered to impose under its regulations, such as the requirement of a filing of a bond, surety, letter of credit, parent company guarantees, establishment of trust funds, additional insurance, among other remedies (e.g., 10 CFR § 50.75 and 10 CFR § 72.30; 10 CFR

§ 50.54(bb)) . MEC and PIRGIM have requested the Commission to consider said remedies not only relative to ENP or CECo, but their respective parent companies.

MEC and PIRGIM also assert that they are “arguably within the zone of interest protected by the governing statutes” (standing criteria (1)(d)). In this regard, MEC/PIRGIM’s original intervention, reply, and this petition, have sought to focus upon the need for ensuring that the recipient of the NRC licenses have adequate financial qualifications, and adequate financial assurances and resources, to ensure that said entities will successfully carryout their responsibilities as required under the Act. MEC and PIRGIM thus seek remedies that provided for under the Act and this Commission’s regulations, and which are consistent with the purposes of this Commission. In this respect, this Commission’s duty to protect public health and safety relative to nuclear energy is enhanced by assuring that long-term financial resources exist to carry out the licensee’s responsibilities under the Act and the Commission’s regulations. This relationship to adequate financial assurance, which includes the remedies sought by MEC and PIRGIM herein, as being related to the public health and safety purposes of the Act, are confirmed by NRC Staff’s own observation in its April 26, 2007 filing:

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of public health and safety. The regulation at 10 CFR 50.33(k) requires that an applicant for an operating license for a utilization facility contain information to demonstrate how reasonable assurance will be provided and that funds will be available to decommission the facility. (p 5).

MEC and PIRGIM have also specified the facts pertaining to their interests in this case. This was included within MEC/PIRGIM’s original intervention petition, its reply, and in this petition for reconsideration, including the attachments hereto.³

³ See summaries of factual evidence concerning these issues presented in the MPSC Case U-14992; Appendix Exhibit A; facts that are also relevant to this proceeding.

This Commission has previously stated its intent to undertake a cooperative role with state regulation to ensure that adequate decommissioning funds and financial resources are available to undertake nuclear plant decommissioning (a concept that should also apply to the disposal of SNF and the decommissioning of SNF sites or ISFSIs).⁴ Thus, any remedies that are available at the state level to enforce ratepayer interests with respect to funds that they have paid for SNF disposal and for nuclear plant decommissioning, can and should be augmented by the power of this Commission to attach additional supportive conditions and remedies to ensure adequate long-term financial assurances and resources, to accomplish the requirements under the Act and this Commission's regulations.

The Commission's April 26, 2007 order also stated that the MEC and PIRGIM had not adequately supported standing by affidavit, or other evidence of their interest in this proceeding and their authorization for seeking to participate in this case. MEC and PIRGIM have attached hereto the May 7, 2007 affidavits of MEC President Lana Pollack (Appendix Exhibit B), and PIRGIM Executive Director Dr. Michael Shriberg (Appendix Exhibit C), to address this Commission's concerns. The affidavits indicate that MEC and PIRGIM's pursuit of participation in this docket is consistent with the purposes, objectives and efforts of their respective organizations in cases involving CECo as a nuclear utility, including issues concerning SNF, disposal, plant and ISFSI decommissioning. The affidavits also establish the authority of counsel to proceed in this docket on behalf of MEC and PIRGIM and their respective citizen members or organizations.

⁴ For example, see NRC's Regulatory Guide 1.159, Rulemaking Summary, 67 FR 78339-37340, 78342-78344 (2002).

C. Relief

Wherefore, the Petitioners respectfully request the Commission to reconsider its April 26, 2007 Order, and to modify same, to grant Petitioners standing to participate in these proceedings. MEC and PIRGIM request such further and consistent relief which is lawful and reasonable.

Respectfully submitted,

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DATED: May 7, 2007

EXHIBIT A

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for approval of a Power Purchase)
Agreement and for other relief in)
connection with the sale of the Palisades)
Nuclear Power Plant and other assets.)
_____)

Case No. U-14992

**INITIAL BRIEF OF MICHIGAN ENVIRONMENTAL COUNCIL
AND THE PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN**

The Michigan Environmental Council (“MEC”) and the Public Interest Research Group in Michigan (“PIRGIM”) file this initial brief in this case in accordance with the schedule established by the presiding Administrative Law Judge (“ALJ”).

I. PROCEDURAL BACKGROUND

This case commenced on August 18, 2006, with the filing by Consumers Energy Company (“CECo”), of its application and accompanying testimony and exhibits of several witnesses. CECo’s application sought regulatory approval from the Michigan Public Service Commission (“MPSC or Commission”) of several relief requests that are pre-requisites for CECo to undertake a proposed sale of its Palisades nuclear plant, and to transfer nuclear waste storage facilities at both Palisades and at CECo’s former Big Rock nuclear plant site.

The Commission issued its Notice of Hearing in this case on August 31, 2007. A prehearing conference was held on September 20, 2006, at which time the following intervenors were granted status as parties: the Association of Businesses Advocating Tariff Equity (“ABATE”), Attorney General Michael A. Cox (“Attorney General”), Energy Michigan, the Michigan Environmental Council and the Public Interest Research Group in Michigan

license extension activities, and thus are not proceeds resulting from these transactions.

Witness Crandall also noted concerns regarding the decommissioning funds and corresponding risks falling upon ratepayers (T 1701-1702):

Q. What are your concerns about the decommissioning funds?

A. First and foremost is whether the funds anticipated as necessary by Entergy will be adequate to reliably complete the job. CECO had accumulated nearly \$566 million for decommissioning, presumably because that was the amount determined to be necessary for a March 2007 NRC license termination. Now for the same plant, Entergy claims to need \$250 million at the time of closing to be adequate to cover the decommissioning at the end of Palisades license extension, December 31, 2031.

When asked how Michigan could be assured that Entergy would have adequate funds for a proper decommissioning of Palisades, CECO suggested that Entergy could decommission at a lower cost, that Entergy's funds were likely to earn higher returns so that the fund would grow more rapidly than CECO's, and the 25-year operating license extension.

If Entergy fails to decommission the plant, the cleanup may fall to CECO (as a previous owner and instigator of the plant) or to the state of Michigan. Somebody will have to complete the decommissioning, and CECO is a logical default in case Entergy fails to perform, notwithstanding the terms of the ASA. MEC and PIRGIM are very concerned whenever a nuclear facility is involved for many reasons, some of which are covered in depth by MEC/PIRGIM witnesses Callen and Peloquin in their testimony in this docket.

MEC/PIRGIM witness Callen also expressed concerns regarding the long-term risks of plant and ISFSI decommissioning, and SNF disposal, and the need for CECO to continue to share these risks (T 1596):

Selling the plant raises related questions due to the fact that Palisades is a nuclear power plant. Among the important issues is the inventory of SNF at the plant. The central question raised is assurance that the SNF will indeed be removed from the plant site. The NWPA and the Standard Contract contemplated that the SNF would be removed to a repository by the federal government. In

considering the sale of the plant, the Commission should investigate the matter to assure no weakening of the Standard Contract between the DOE and CECo for removal of SNF from the plant. This concern is for the SNF currently existing as well as that which will be generated after the sale and until the end of the plant operating life.

Q. What are your specific recommendations in this case?

A. I recommend that CECo and its parent, CMS Energy, be required by the Commission to continue to share in the costs of SNF until SNF and ISFSIs are fully decommissioned and the SNF is properly disposed. Specific remedies include the filing and funding by CECo stockholders of a corporate performance bond, maintenance of insurance, and other financial assurance remedies listed in NRC regulations and included in MEC/PIRGIM's March 2003 complaint in MPSC Case U-13771.

MEC/PIRGIM witness Crandall (T 1702-1704) also highlighted some major weaknesses in CECo's claims that its "Continued Cost of Ownership" ("CCO") was higher than costs under the proposed Purchased Power Agreement ("PPA"):

Q. In addition to the proceeds from the sale at the time of closing, what does CECO project ratepayers will save by purchasing power from Entergy rather than continuing to own the Palisades plant?

A. CECO projects that over the life of the PPA, through 2021, CECO ratepayers will save \$199 million relative to continuing to own the Palisades plant.

Q. Do you agree with this calculation?

A. No. CECO will need to secure electricity for its customers after the PPA expires in 2021. If CECO continued to own the plant until the expiration of its license, it would be supplying power through 2030. Thus it is inappropriate to compare an alternative with a 15-year life to the first 15 years of another with a 25-year life.

Q. What would be a more proper comparison?

A. It would be more proper to compare the 25-year cost of continued operation to the 15-year cost of the PPA plus a 10-year purchase of power from the markets, in other words, a 25-year to 25-year comparison. This was not done by CECO.

auction conducted by the very same firm that was involved in this case, when compared or contrasted to the terms and conditions of the Palisades sale herein. In this respect, Wisconsin Electric obtained the right to buy the capacity and energy from Point Beach from the full extended life of the plant, rather than just 15 years. Wisconsin Electric will also retain more benefits from decommissioning funds and uprates of the plant's capacity. Moreover, the proceeds or sale price per kilowatt of the Wisconsin sale is far better than that achieved with respect to this CECo proposed sale.

B. In the event the Commission were to approve CECo's requested relief, the Commission should condition any approvals on the protection of ratepayer funds and interests relating to several issues.

1. CECo should be required as a pre-condition to any authorized sale or transfer of the Palisades plant, and the two ISFSIs, to immediately fund the Big Rock nuclear decommissioning plant with the principal amounts of all decommissioning rate surcharges that CECo did not deposit in the fund for the years 2001-2003, plus associated interest.

The Commission as a pre-condition of any approvals in this case should order CECo to immediately deposit into its Big Rock decommissioning fund all the principal amounts of the decommissioning rate surcharges that CECo collected from ratepayers for the Big Rock decommissioning fund during the years 2001-2003, plus accumulated interest. CECo should also deposit in said fund all interest which would have accrued after 2003 if CECo had placed these surcharges into the fund during those years.

The Commission should require this action on an immediate basis because it is fully consistent with the Commission's original orders in U-6150 establishing the decommissioning funds. The settlement and orders in U-6150 require that the surcharges be collected from ratepayers for the special purpose of funding nuclear plant decommissioning. Second, as presented by MEC/PIRGIM witness Peloquin in this case (T 1542-1547 and Exhibit MEC-2), CECo's own tariff sheets establish that the decommissioning surcharges were being included

within the “frozen rates” collected during 2001-2003. Third, nothing in Act 141 provided CECo with any authority to cease placing into the decommissioning funds the amounts it actually collected from ratepayers as decommissioning surcharges. Fourth, no evidence suggests that a Commission order or Commission Staff directive provided CECo with this authority. Rather, CECo simply undertook a unilateral self-serving corporate action in ceasing to fund the Big Rock decommissioning fund during the three years, 2001 through 2003, while presuming to collect the surcharges nevertheless. The effect of this action was to divert this specific purpose ratepayer money from the fund to the bottom profit line for CECo/CMS Energy.

Witness Peloquin in this case has presented substantial evidence documenting that CECo collected over \$32 million per year (for three years) pursuant to previous Commission decommissioning orders for the Big Rock nuclear plant. These rate surcharges were authorized for one sole purpose, for deposit into the Big Rock nuclear plant decommissioning fund. CECo, however, never placed any of these funds into the Big Rock decommissioning fund during the years 2001 through 2003. With the 4-5% interest that was assigned the Big Rock decommissioning fund under prior Commission orders, the shortfall in the Big Rock plant caused by CECo’s failure to place these surcharged amounts into the fund was approximately \$140 million by the end of 2003 (T 1544-1545, Exhibit MEC-3). Nevertheless, CECo in this case attempted to claim that the decommissioning fund for Big Rock was “underfunded”, and that \$55 million should be taken out of the proceeds of this proposed Palisades transaction to pay CECo back for amounts it expended in excess of the decommissioning fund. MEC/PIRGIM has recommended in this case that all of the ratepayer collected funds (approximately \$140 million) be deposited in the decommissioning fund, and that all of this ratepayer paid money must be protected and preserved for ratepayers.

MEC/PIRGIM witness Peloquin extensively testified on this issue. Witness Peloquin testified that CECo witness Torrey's Exhibit A-12 included five (5) items totaling \$133,490,000 for the Big Rock plant that CECo proposed "paying for" out of Palisades decommissioning funds (T 1542). Witness Peloquin also referenced CECo witness Joos' testimony that \$55 million was incurred for Big Rock decommissioning and site restoration costs in excess of what customers paid into the decommissioning fund, and that a portion of the proceeds freed up from the Palisades non-qualified decommissioning trust "should be utilized to cover this shortfall at Big Rock". Witness Peloquin addressed CECo's claims (T 1542-1546) as follows:

Q. Do you agree that Palisades decommissioning funds should be utilized to pay for Bog Rock decommissioning costs?

A. No. There is no need to use the Palisades decommissioning funds to pay Big Rock decommissioning costs.

Q. Mr. Joos at page 16 of his prefiled testimony stated that: "(1) The remaining decommissioning and site restoration costs incurred at the Big Rock site in excess of what has been paid into the decommissioning fund by customers are approximately \$55 million We believe it makes sense to utilize a portion of the proceeds freed up from the Palisades nonqualified decommissioning trusts to cover this shortfall at Big Rock, in lieu of a new decommissioning surcharge imposed on customers" Do you agree that there is a decommissioning shortfall at Big Rock?

A. I disagree. There is no shortfall!

Q. Please explain why there is not a shortfall.

A. The last nuclear decommissioning surcharge case that included the Big Rock Point nuclear power plant was the Commission's Case No. U-11662.

Consumers' U-11662 witness Mr. LaGaurdia forecasted a Big Rock Point decommissioning cost of \$293,861,174, in 1997 dollars.

Consumers' witness Mr. Simonson converted the \$293.8 million amount to a MPSC jurisdiction amount of \$341,545,621 in

nominal dollars. This equates to a total company decommissioning cost forecast of \$350,760,000.

Mr. Simonson presented his Exhibit A-17 wherein he calculated the need for a \$32,466,243 Big Rock decommissioning annual provision for each of the years 1999 and 2000. I have attached the applicable page 23 of Mr. Simonson's Exhibit A-17 as page 2 of my Exhibit MEC-3 (WAP-3). Mr. Simonson included no additional ratepayer funding provision after the year 2000. The \$2,705,523 provision amount in the year 2001 is the December 2000 monthly surcharge revenue deposited into the fund during the month of January, 2001.

The Commission approved Consumers request for a Big Rock decommissioning surcharge designed to provide \$32,466,243 for each of the years 1999 and 2000. The Commission also approved my request that the Big Rock surcharges should be separated from the Palisades surcharges and that the tariff should explicitly state that the Big Rock surcharges would end on December 31, 2000.

However, the Big Rock Point decommissioning surcharges did not terminate as of December 2000. The legislature passed a bill that became Public Act 141 of 2000. 2000 PA 141 included a "rate freeze" provision that rates in effect as of 1 May 2000 would remain in effect until December 31, 2003.

The continuation of the Big Rock decommissioning surcharges through the date of December 31, 2003 is not in doubt. The Commission in its case No. U-12464 Order dated August 4, 2000 ruled that the termination of the Big Rock decommissioning surcharges scheduled by a March 22, 1999 order in Case No. U-11662 could not take effect because of the rate freeze established by 2000 PA 141.

The Commission's February 28, 2005 Order in Case No. U-13917 stated at page 3 "In its supplemental filing, Consumers maintained that because the Big Rock nuclear decommissioning surcharge will no longer be in effect starting January 1, 2004, . . ." (emphasis added)

Additionally, please turn to my Exhibit MEC-2 (WAP-2). The "sixteenth" through the "nineteenth" Revised Sheet(s) No. E-2.00 all contain the U-11662 approved Big Rock decommissioning surcharges effective ". . . through December 31, 2000."

The Big Rock decommissioning surcharges remained in effect without termination on the "twentieth" and "twenty-first" Revised Sheets for the years 2001 through 2003.

The Big Rock decommissioning surcharges were finally terminated on the "twenty-second" Revised Sheet, filed November 18, 2003, for service "Effective January 2004 Billing Month."

Page 1 of my Exhibit MEC-3 (WAP-3) is a revision of Mr. Simonson's U-11662 exhibit with only one change in the assumptions. I changed the termination date of the Big Rock decommissioning surcharge from 12/31/2000 to 12/31/2003 to reflect the effect of 2000 PA 141. Changing the termination date of the Big Rock decommissioning surcharges to 12/31/2003, the factual termination date, results in a forecasted December 2006 Big Rock decommissioning fund balance of \$130 to \$140 million. This balance would be sufficient to fund all of Consumers Big Rock requests.

Q. Is the Big Rock decommissioning shortfall the result of much higher than forecasted decommissioning costs?

A. No. Actual costs to date appear to be close to the U-11662 forecasted values. Mr. Simonson's U-11662 exhibit forecasted \$341.5 million of MPSC jurisdictional Big Rock decommissioning expense. Referencing Consumers response to interrogatory U-14992-EM-CE-185, it appears that Consumers has had MPSC "withdrawals" totaling \$337.8 through October of 2006.

Q. In your opinion Mr. Peloquin, what is the primary reason that Consumers' Big Rock decommissioning trust funds are depleted?

A. The reason is that Consumers Energy did not deposit any of the ratepayers Big Rock nuclear decommissioning surcharge funds into the MPSC decommissioning trust funds during the years 2001 through 2003. This fact is demonstrated within Consumers' response to U-14992-MEC-CE-192, that references U-14992-EM-CE-185, at the page which is Bate stamped 99202674, that I have attached to my exhibit.

Q. Do you have an approximation of the amount of dollars that Consumers billed its customers for Big Rock decommissioning surcharges that Consumers did not deposit in the trust funds?

A. Yes. Approximately \$100 million in principal. (3 x \$32,466,243 + \$2,705,523)

Q. In your opinion, did Consumers have an obligation to deposit the \$100 million into its jurisdictional Big Rock decommissioning trust funds?

A. Yes.

Q. What is the basis of that obligation?

A. In Case No. U-6150 captioned "In the matter of the establishment of Nuclear Plant Decommissioning Funds", the parties came to a settlement. The "Settlement Agreement" was accepted by the Commission and was attached as "Exhibit A" to the Commission's U-6150-R Order dated August 26, 1986. Representatives of the Consumers Power Company were signatories to the "Settlement Agreement". The "Settlement Agreement" included the following provision at paragraph 6:

"6. Each utility shall pay to the Section 468A trust with respect to each year for which a provision for nuclear plant decommissioning is in effect, the lesser of the revenues from such provision or the jurisdictional portion of the Ruling Amount (as defined in paragraph 23) for such year. The balance remaining, if any, shall be paid into the Non-Section 468A trust. Such payments shall be made on or before the 21st day of the month following the month in which the billings for nuclear plant decommissioning are made. The expiration of the operating license for each nuclear generating unit shall be initially considered as the retirement date for each generating unit."

In my opinion, paragraph 6 of the U-6150-R Settlement Agreement mandated that the Big Rock nuclear decommissioning surcharges that Consumers billed its customers during the years 2001, 2002, and 2003 must be deposited into the Big Rock decommissioning trust funds.

MEC/PIRGIM witness Peloquin (T 1547) also clarified that the issue concerning CEC's collection of, and non-deposit of Big Rock decommissioning surcharges for the years 2001-2003,

is a completely separate issue from the Big Rock related "backfilling issue" that arose in CECo's 2004 and 2005 PSCR cases, U-13917 (and U-14274).⁶ Witness Peloquin stated (T 1547):

Q. Mr. Peloquin, is your issue above relating to CECo's non-deposit of deposited Big Rock decommissioning surcharges into the decommissioning trust funds an iteration of the back-filling issue that was decided in Case No. U-13917?

A. No. It is not. The backfilling issue was applicable to the years 2004 and 2005, not 2001 through 2003. Consumers did terminate the Big Rock surcharge starting January 1, 2004. It is my understanding that Consumers simultaneously increased its PSCR factor, the effect of which was to keep the 2004 revenues the same. The increase in the 2004 PSCR factor, which was labeled back-filling, was the issue decided in Case No. U-13917.

Q. MEC has appealed the Commission's U-13917 Order. If MEC wins the appeal, what effect would that have upon the Big Rock decommissioning shortfall?

A. One possible outcome could be a requirement to deposit additional funds into the Big Rock decommissioning trust funds, or a PSCR refund to ratepayers. Such an additional deposit or refund, however, would not diminish or affect my issue above with respect to the 2001, 2002, and 2003 decommissioning surcharge collections.

Q. Have you included any funding applicable to the back-filling issue in your proposals?

A. No. This is an issue which MEC/PIRGIM has preserved on appeal, and will be decided in the future based upon that case.

CECo has presented no justification in its evidence or argument for failing to deposit the continuing Big Rock decommissioning surcharges collected from ratepayers under frozen rates

⁶ Exhibit MEC-30 and cross-examination of CECo witness Torrey established that CECo did not reduce its residential rates by \$12.4 million in each of the years 2004 or 2005, which amount related to the residential class' allocated share of the Big Rock decommissioning surcharge revenues. Instead, CECo "transformed" this base rate surcharge into, in effect, an Act 304 PSCR cost, and then charged only the residential ratepayers these amounts, based on the claim that its PSCR revenues under the "capped rates" required by Act 141 resulted in an underrecovery of its Act 304 costs (thus "justifying retaining the \$12.4 million each year). In these PSCR cases, and in an appeal of U-13917, MEC/PIRGIM claimed that this CECo refusal to reduce its capped rates in 2004/2005 by the Big Rock surcharge revenues in those years, and collecting them for "PSCR costs" was unlawful and unreasonable. Decommissioning surcharges were base rate surcharges, not PSCR costs under Act 304, and no provision of Act 141 authorized said "backfilling" as a means to escape the meaning of a "rate cap" (i.e. rates could be lower than the cap).

during 2001-2003 in the Big Rock decommissioning fund. The Commission should therefore order CECo to immediately deposit all such principal and interest into the fund.

2. **The Commission should require as a pre-condition of any transaction approvals that the Commission will continue to maintain substantial jurisdiction over existing decommissioning trust funds, including qualified and non-qualified trust funds.**

The Commission should also require as a pre-condition of any approval of the transactions requested by CECo that the Commission maintain substantial jurisdiction and regulatory oversight over existing qualified and non-qualified decommissioning funds. In this respect, MEC/PIRGIM witness Peloquin has recommended that the Commission protect the qualified decommissioning fund as much as possible. Witness Peloquin (T 1535-1537) testified in opposition to CECo's proposal to transfer \$366 million of Palisades decommissioning trust funds to ENP (as shown on CECo witness Torrey's Exhibit A-12). Witness Peloquin (T 1535-1536) testified:

....

... I am rather appalled by Consumers proposed treatment of the decommissioning trust funds. Even though Entergy has only requested \$250 million of decommissioning funds, Consumers is willing to donate an additional \$116 million of decommissioning trust funds, if the IRS does not meet their timetable. (Joos prefiled page 12 and Torrey prefiled page 18). This is not Consumers property that Mr. Joos and Mr. Torrey are so blithely willing to give up. These are the ratepayers funds, and the earnings thereon.

While the Palisades trust funds reside with Consumers, the Commission at present has significant control and jurisdiction over these funds. However, unless proper conditions are imposed with respect to the proposed transactions, the Commission will have little or no leverage to force a return of the \$116 million after these transactions are completed. Once Entergy gains possession of the additional \$116 million of decommissioning trust funds, Entergy will have no incentive to give up possession of these ratepayer generated funds.

At all costs, the Commission should avoid a situation where the qualified decommissioning fund, which has been fully funded by Michigan's ratepayers over such a lengthy period of time, becomes subject to punitive taxes from the IRS. The safest course would be to apply for transfer of only the minimum amount necessary for the Palisades plant (of either the \$250 million as proposed or preferably the \$201 million "minimum" recognized by NRC regulations), with the MPSC continuing to regulate the remainder of the qualified decommissioning fund until an IRS ruling is obtained. In the event that the IRS does not rule favorably, the Commission should continue to regulate these funds or direct other transfer or use of the funds to protect ratepayers.

In addition to the "qualified decommissioning fund" funded by ratepayers (totaling \$366 million), the ratepayers also funded a separate and additional "unqualified decommissioning fund" (now totaling \$200 million). The purpose of this fund was to provide additional security for the anticipated cost of decommissioning the Palisades plant. CECo through this transaction wishes to retain and acquire at closing all of the \$200 million of these ratepayer collected special purpose funds, subject to undetermined uses of the funds, in part "to benefit ratepayers". MEC/PIRGIM opposes CECo acquiring any portion of this \$200 million in ratepayer funds, and asserts that all of these funds should be fully protected, continued in trust regulated by the MPSC, or should otherwise be returned to ratepayers pursuant to Commission determinations. At no time should CECo be able to access these funds.

3. **The Commission should require as a pre-condition to any approval of CECo's requested transactions that all of the SNF disposal fees collected from ratepayers for pre-April 1983 nuclear generation be placed by CECo into an separate external interest bearing trust regulated by the Commission.**

The Commission should also require as a pre-condition of any approval of the transactions proposed by CECo that CECo deposit into a separate external interest bearing trust

regulated by this Commission all ratepayer collections for SNF disposal fees relating to pre-April 1983 nuclear generation at the Big Rock nuclear plant and at the Palisades nuclear plant.⁷ While this amount has been collected from ratepayers, CECo never placed the funds in the federal Nuclear Waste Fund, and the funds are at present unsecured, represented only by accounting entries on CECo's books. In this case, CECo makes no proposal to place said funds into an interest bearing external trust, such as a "SNF and SNF site decommissioning trust" recommended by witness Callen in CECo's decommissioning case, U-14150, and also in this case. CECo instead leaves this issue unaddressed.

MEC/PIRGIM request in this case that a separate SNF trust be funded to protect this ratepayer money out of the proceeds obtained from the sale of the Palisades plant. This is an essential remedy that the Commission should implement now. The Commission presently has substantial jurisdiction over CECo and these funds, but will lose a large measure of this authority if and when a sale is authorized. MEC/PIRGIM witness Peloquin testified (T 1553-1554) as follows regarding this issue:

I propose that Consumers should be required to utilize their share of the "proceeds" to fund the pre-April 7, 1983 DOE liability for spent fuel costs.

DOE's Standard Contract provided several optional methods to pay for nuclear fuel consumed prior to April 7, 1983 (pre-83'). Consumers chose the option to delay payments until the spent fuel was actually delivered to DOE. The original DOE liability in 1983 was \$44 million. That liability has now grown to \$148 million as of April 1, 2007. Mr. Reed states that DOE will not start accepting spent fuel until after 15 years. The DOE spent fuel liability that was established in 1983 will not start being paid until some time after the year 2022, 40 years or more.

⁷ This ratepayer funded liability increases with interest accruals; the balances are as follows: \$148.3 million on June 30, 2006 (Exhibit MEC-6); \$150.8 million as of October 31, 2006 (Exhibit MEC-11); \$153.3 million on March 1, 2007 (forecasted), (Exhibit MEC-11).

The DOE spent fuel liability now shares the same characteristics that lead to nuclear decommission trust funds. Namely, very long time frames and huge dollar amounts. And the same risks, that ratepayer funds might not be available when they are needed in the future.

This is the proceeding wherein the Commission will have an excellent opportunity to protect the funds that the ratepayers sent to Consumers Energy to pay for the DOE pre-1983 spent fuel liability. Consumers will have more than enough cash to fund a spent fuel trust fund. And, the Commission can control the disposition of the "proceeds" as a condition of the Palisades sale.

The Commission should not delay funding of a spent fuel liability trust fund. Consumers Energy seems to be downsizing. The last major power plant addition was the Campbell 3 unit decades ago. Consumers has sold its transmission system. Consumers Power abandoned its Midland nuclear power plant and CMS Energy recently sold its 49% interest in the MCV, the Midland replacement. Consumers is selling its Palisades nuclear power plant. The DOE liability will continue to grow as Consumers downsizes.

Q. Are the ratepayers' prospective rates lower if the DOE liability is carried on Consumers' balance sheet rather than creating a trust fund?

A. That is the same question poised in the decommissioning cases. The answer remains the same. The ratepayers costs are not lower if they have to pay twice.

MEC/PIRGIM witness Ronald Callen testified extensively regarding this issue, stating the issue was a major subject of his testimony (T 1586):

I refer you to my direct testimony in Case U-14150 concerning decommissioning surcharges for Palisades. In it, I identified and explained debt CECO owes the U.S. federal government for disposal of spent nuclear fuel (SNF) that was used (exposed in the reactor core) before the enactment of the Nuclear Waste Policy Act (NWPA) in 1982. Under terms of the contract written pursuant to the terms of the NWPA between the U.S. Department of Energy (DOE) and CECO, payments were required for ultimate disposal of all commercial SNF, and at a rate of one mil per kw hour of nuclear generated electricity. CECO was allowed to incur a debt for the payments for SNF used before the NWPA was passed. CECO was also permitted by the MPSC to collect these sums from

ratepayers. In addition to the payments, interest was also incurred. The subject of my testimony is that debt, already funded by ratepayers.

Witness Callen testified that “these funds, paid by CECo ratepayers, are held internally by CECo and are not secured”, and that the MPSC should “place this total amount (\$148.3 million), as increased by interest to the date of closing, in an external trust regulated by the MPSC” (T 1587). Witness Callen makes this recommendation in part because of “the great uncertainty in the federal SNF disposal program” and also because “placing this amount in an external trust will overcome the great uncertainty that exists with respect to the integrity, safety, and availability of these funds” (T 1587). Witness Callen also recommended that these funds be escrowed at closing from the proceeds arising from the transaction, if approved (T 1588):

I recommend that the funds be obtained from the proceeds CECo will obtain from the sale of Palisades, presuming the sale is completed. The amount of the debt is large and CECo’s financial condition raises questions as to CECo’s ability to make available such a large amount at any other future time. The sale is a one-time excellent opportunity to obtain such a large amount out of the proceeds, and such an approach would recognize that the debt represents funds collected and financed by ratepayers, who now will be rendered even more unsecure if the requested transactions occur without the MPSC exercising its jurisdiction to protect the debt. Furthermore, CECo acknowledges the sale proceeds are ratepayer funds.

Witness Callen also cited the MPSC’s own precedent for such action (T 1588):⁸

... Some years ago, the MPSC ordered Indiana Michigan Company to establish an external fund for the very same type of debt for the Donald C. Cook nuclear power plant.

Witness Callen (T 1588-1589) also referred to the risk placed on Michigan ratepayers and taxpayers if the Palisades and Big Rock SNF is never disposed, and also the potential windfall that can occur if these ratepayer-collected funds fail to be available for SNF disposal should the

⁸ The MPSC ordered such an SNF trust in IM Power docket U-11237.

federal government fail to perform SNF disposal. Witness Callen also noted that these funds will be needed:

Q. Won't CECo (or its successor) be required to pay this amount to the federal government at some future time?

A. Perhaps. This is very unclear and speculative, however. The entity holding SNF will be required to pay the total debt, including interest incurred at the time the federal government first begins to receive SNF from CECo (or its successor) for disposal. As I have mentioned above there is doubt as to whether the federal government will ever begin to accept SNF for disposal. Moreover, however, if the funds represented by the debt no longer exist or cannot be raised by the then holder of SNF, that entity will lose its right to federal SNF disposal services, and the Michigan ratepayers and taxpayers may likely be required to fund the amount of this debt a second time to obtain any disposal services.

Q. Is it possible that these funds may never be needed?

A. Not at all. Total federal failure will assure that SNF will remain at the plant site a long time if not indefinitely. The SNF storage means being employed presently is a not disposal, it is a temporary SNF storage arrangement. There must be some final disposal arrangement. It is possible that the State of Michigan or Entergy, or some group of nuclear utilities would have to dispose of this and all other commercial SNF in a process I cannot even guess at. In that event, these funds (if escrowed in trust) would be available for such use. In addition, the movement of these monies into an external trust assures their availability despite whatever might happen to CECo, or its successor to the SNF (Entergy LLC), e.g. its bankruptcy or sale.

Q. Why do you propose that the MPSC order this trust to be established?

A. The MPSC is the only entity that can so order.

MEC/PIRGIM witness Callen (T 1589-1592) also fully explained the uncertainties existing in the federal SNF disposal program:

In my testimony in Case U-14150 and in earlier cases in which I submitted testimony, I explained in some detail how the U.S. has needed a disposal facility for high level radioactive waste including SNF for over fifty years, that the NWPA had mandated a

date of no later than January 1, 1998 for the opening of this facility, that the DOE (the assigned federal agency) had failed to meet the mandate, and also failed to meet its own replacement date of 2010. This latter failure was confirmed by their failure to meet a corresponding date of 2004 for submission of a license application to the U.S. Nuclear Regulatory Commission. My doubt and that of many others was sadly confirmed by the DOE.

Q. Has anything happened since to restore your faith in the success of the disposal program?

A. Some positive events have occurred, but they are far from sufficient to assure the program will succeed. The director of the program resigned and yet another person has been installed recently as director. He has testified in Congress that the federal government will begin disposal no earlier than 2017, or 19 years later than the NWPA mandate. He has conditioned meeting that date on several unlikely outcomes – such as the absence of lawsuits challenging repository siting and construction, SNF transportation, or NRC licensing, obtaining from Congressional authorization all the funds necessary for the program, and assuring access to all lands necessary for constructing facilities for transportation of the SNF to the disposal site, among others. The conditions are major exceptions and are highly unlikely to occur. In fact, only several months later, the federal director announced a more “realistic” date of 2020.

As for the Congress, it recently seemed to register doubt over the likelihood that the program would ever succeed. There have been several bills that propose SNF storage initiatives, seeming to adopt storage in light of an expected failure of the disposal program.

A disturbing change was made to the funding for the program some years ago. Even though the disposal program funding mandated by the NWPA was a single-purpose fund to be paid by utilities for only the disposal program, the Congress later passed legislation to make that and most, if not all other special purpose funds, a part of the of overall federal budget. Thus, the Congress has reason to grant smaller amounts for the program and has often not granted the DOE’s requested amounts for funds. As a recent example, the Senate Majority Leader-to-be, a senator from Nevada, has announced his continuing opposition to the program and has indicated he may use his power to restrict its funding. At a meeting I attended with senior staff of the U.S. House Appropriations Committee, they opined that, should the funding be so restricted, they would decide the program would not be viable

and would consider not funding it at all. That is to say that they consider the program merely discretionary.

Another fact that adds to doubt over the success of the program concerns the flow of payments for the fee for disposal - the one established by the NWPA. As of March 31, 2006, \$26.23 billion has been sent or owed to the U.S. Treasury by utilities that have used nuclear fuel. This value comes from page two of my exhibit MEC-6. It is the work of MPSC staff and is obtained by accumulating all utility payments and debt from the quarterly statements of the DOE I referred to earlier in this testimony. Every dollar including the debt owed has been paid for by ratepayers. This is despite the fact that the program is decades behind the mandated schedule, at least presuming the announced date. DOE performance of the program has been criticized repeatedly, officially by the U.S. General Accountability Office and by the Inspector General of the DOE. It is patently obvious that these delays have added cost to the total program expense, estimated some time ago at \$60 billion. Yet, utilities continue to pay the fee. While they contend that, not to do so, would endanger their plant operating licenses, there is no proof or explanation to justify this conclusion. Furthermore, that risk could be avoided if the utilities would escrow SNF fee payments as part of an overall self-help or legal remedy to enforce their Standard Contracts. Without such or parallel action, there is no pressure on the DOE to upgrade its performance, or to pressure the Congress to alter the conduct of the program. It appears that the utilities are content to send the ratepayers' funds to Washington at the mercy of the Congress.

To the utilities' credit, including CECO, they have sued the federal government for damages - those resulting from at-reactor storage of SNF that would not have been necessary had the DOE met its mandate for opening the disposal facility. Some of the suits have been decided in the U.S. Court of Claims in favor of the utilities. What is missing are assurances by all utilities that they will credit ratepayers for any funds recovered. Furthermore, it appears the government has and will use the opportunity to appeal these decisions, thus making it indeterminate as to when, if ever, payments will be made. Thus, the hope that payments of huge amounts of damages would constitute a spur to the DOE to improve the conduct of the program has not been realized. Moreover, however, none of these federal damage cases protect the ongoing SNF fees that are being paid, nor do they actually require "specific performance" in the form of SNF disposal, or the refund or restitution of past fees collected.

Witness Callen also testified that he has a concern relating to the organization of the Company that proposes to own and operate Palisades, and that this factor provides “even further reason to assure these funds are assuredly available and secure in the event of federal failure” (T 1593). Elaborating, witness Callen testified (T 1592-1593):

As I testified in Case U-14150 and elsewhere before the MPSC, the organization proposed is a limited liability corporation (LLC). That means it will have essentially no or very limited financial resources. Even though the parent corporation reports extensive financial capability, the very nature - and likely the very reason for such an arrangement, is to protect the parent corporation against any liabilities that the LLC might incur. That is important in the event that the federal disposal program is a failure. The enormous cost of disposing of Palisades’ and Big Rock’s SNF by a means now undeterminable could encourage default by the LLC or a successor entity to which Palisades (or Big Rock’s ISFSI site and adjacent land) might be sold.

Witness Callen also recommended that the Commission protect both past and ongoing SNF fee payments by ratepayers, providing additional reasons supporting his escrow trust remedy (T 1596-1597):

The Commission should also establish mechanisms to protect ratepayer payments for the SNF fees, both past and ongoing. Among the remedies should be Commission-ordered direction of ratepayer payments of SNF fees, including the \$148 million debt referred to earlier to a separate external “SNF and SNF site Decommissioning Trust” as I recommended in MPSC Case No. U-14150.

.....

..... I encourage the MPSC to establish and fund the external reserve especially in light of the financial condition of CECo, the opportunity to do so now from the proceeds, the limited remaining duration of MPSC jurisdiction to impose said requirements now, the limited liability features of the purchaser and its lack of financial assurances, the deeply troubled federal program, the risky organization proposed for the new owner of Palisades plant, and Palisades and Big Rock ISFSI sites, and the demonstrated ability of the MPSC to establish and fund an external trust to protect

Michigan's ratepayers and taxpayers with respect to these substantial long-term costs and financial risks.

For the reasons stated above, the time has come for the MPSC to establish a "SNF and SNF site decommissioning trust", from the proceeds to be received by CECo in this transaction, to ensure that funds are available to contribute toward the ultimate decommissioning of SNF and the SNF sites in Michigan that CECo itself has created. This is a minimal remedy which is aligned with CECo's responsibility to properly share in funding the potential immense obligations that could be shifted to Michigan's ratepayers and taxpayers if the SNF that CECo generated in the past is not properly disposed, and the SNF ISFSI sites decommissioned. CECo in this case claims that it wishes to shed all "costs and financial risks" of nuclear energy including SNF. As a corresponding reciprocal obligation to achieve this benefit, CECo must also recognize its responsibility for preserving the funds collected from ratepayers expressly for SNF disposal. Thus, contemporaneously with any approval of transactions that would serve to detach CECo from all risks and financial costs of nuclear energy and SNF, the Commission should also adopt this remedy to protect ratepayers, and to prevent the utility from achieving an unwarranted windfall that is adverse to ratepayers.

- 4. The Commission as a pre-condition to any approvals of CECo's requested transactions should ensure that all SNF and ISFSI costs at the Big Rock nuclear plant site and at Palisades are assigned to CECo's damage suit against the DOE, and not to ratepayers from the proceeds arising from these transactions.**

The Commission should also require as a pre-condition to any approval of the transactions CECo requests in this case, that all costs related to SNF storage and ISFSI facilities at Big Rock and Palisades be assigned to CECo's damage suit against the DOE, and not to ratepayers via the transaction proceeds.

CECo in this case acknowledges that \$85 million is related to the interim spent fuel storage installation (“ISFSI”) located at the Big Rock nuclear plant site. This amount includes \$55 million related to past ISFSI costs, to build the storage site and to acquire casks to store SNF, and also a \$30 million payment which CECo proposes to make to Entergy Palisades LLC (“ENP”), to take over all responsibility and ownership of the Big Rock ISFSI facility.⁹ While CECo essentially acknowledges that all of this \$85 million should be directed to its damage suit against the Department of Energy (“DOE”), (e.g. Exhibit MEC-24), CECo nevertheless wishes to receive the \$85 million out of the proceeds from this transaction, which causes ratepayers to pay for this and not the DOE. MEC/PIRGIM opposes taking the \$85 million out of any proceeds from these transactions because CECo should instead pursue and receive this amount as damages from the DOE.¹⁰

MEC/PIRGIM witness Peloquin (T 1548-1553) testified that neither the historic nor prospective costs of the Big Rock ISFSI should be recovered from the ratepayers or decommissioning trust funds:

A. The cost of the Big Rock ISFSI was caused by the default by the U.S. Department of Energy (DOE) in its Standard Contract. (See testimony of Ronald C. Callen filed in this case). The ratepayers are not the party that caused the expenditures for the Big Rock ISFSI and they should not be held responsible for funding the Big Rock ISFSI. Mr. Callen informs me that other owners of retired electric nuclear power plants have already received favorable damage award findings in the federal courts for historic ISFSI costs.

Allowing Consumers to recover historic Big Rock ISFSI costs from the ratepayers will take away Consumers’ financial

⁹ MEC/PIRGIM witness Peloquin (T 1548), referring to CECo’s witness Torrey’s exhibit A-12, testified: “The historic expenditures for the Big rock Interim Spent Fuel Storage – (ISFSI) of \$55,050,000 are found on line 4 of page 2. The prospective costs of the Big Rock ISFSI is the \$30 million item found on line 9 of page 1 along with the related \$22,000 land transfer on line 11 of page 1.”

¹⁰ A number of utilities on a national basis have successfully obtained sizeable damage awards from the federal government due to the federal government’s default in its Standard Contract with the utilities for the disposal of SNF; therefore, the ratepayers should not be paying this cost.

incentive to aggressively seek recovery of the ISFSI costs from the DOE. If Consumers recovers its Big Rock ISFSI from the ratepayers in this case, Consumers would have a financial disincentive to aggressively pursue recovery from DOE. Consumers would be required to expend legal resources to recover damages from DOE, yet Consumers would then be hesitant to pass on to the ratepayers, or it would simply see no net-benefit to itself from pursuing these legal avenues.

Allowing Consumers to recover historic Big Rock ISFSI costs from the ratepayers may also weaken Consumers ability to recover the ISFSI costs from the DOE. How is Consumers Energy "damaged" by the DOE's contract breach if Consumers has already recovered these costs from the ratepayers by means of this case?

Q. Why is the \$30 million "Big Rock Amount to Entergy" a prospective cost of the Big Rock ISFSI?

A. Mr. Joos testifies that the \$30 million payment to Entergy is an exchange for Entergy taking title to the Big Rock ISFSI at page 11 of his prefiled testimony. Mr. Reed (at page 49 of his prefiled testimony) describes the \$30 million payment for the Big Rock ISFSI as being prospective costs with a duration of over 15 years.

Q. Should the \$30 million payment to Entergy for the prospective Big Rock ISFSI costs be recoverable from the ratepayers or the decommissioning trust funds?

A. No. The costs of the Big Rock ISFSI, both historic and prospective, were caused by the DOE's contract breach. Mr. Callen informs me that these costs would be periodically recoverable from DOE, as they become historic costs.

Witness Peloquin (T 1549-1553) also testified that CECo should not receive recovery for CECo's payment of \$30 million to ENP for future Big Rock ISFSI costs given the corporate organization and overall context of the transactions:

I have an additional reason to oppose recovery of the \$30 million payment for future Big Rock ISFSI expenditures. Paying \$30 million up front to an LLC for a service to be provided over multiple decades is financially risky. Consumers' proposal includes no escrow, no trust funds, and no guarantee from Entergy Nuclear Palisades' parent Entergy Corporation.

A brief review of Entergy Nuclear Palisades LLC is required. Entergy Nuclear Palisades, LLC (“ENP-LLC”) would be the sole owner of Palisades and the Big Rock ISFSI. “Entergy Nuclear Palisades is a newly formed entity, . . .” and “at the closing of the purchase, Palisades and the Big Rock ISFSI will be the only assets on Entergy Nuclear Palisades’ balance sheet. As of the date of this application, Entergy Nuclear Palisades has no liabilities.” (“NRC redacted Application, pages 6 and 7). Entergy Nuclear Palisades will be given a \$25 million line of credit by an affiliate to provide working capital (NRC Redacted Application pages 8 and 9). “Entergy’s ONLY revenue stream is based upon delivered energy, . . .” (pre-filed testimony of William Garrity at page 11, emphasis added). According to the analyses of George E. Sausoucy, PE, LLC:

A review of this information demonstrates that the projected CCO of Palisades (as forecasted by Consumers) **exceeds** the projected revenue, in eleven of the fifteen years of the PPA. This is demonstrated in table 1, which was developed from information in MPSC Case No. U-14992. The “Revenue Minus Cost” shown in Column 7 of Table 1 measures the amount by which the projected CCO exceeds the projected PPA revenue in a given year. Of particular note is the fact that a shortfall exists in the last seven consecutive years of the term, and in nine of the last 10 years of the 15-year term of the PPA. (Local Units intervention, NRC Docket 50-255, December 5, 2006; attached Affidavit of George E. Sausoucy).

Mr. Sausoucy’s analysis was based upon Consumers’ projected cost at a high capacity factor. Entergy Nuclear Palisades, and its operator ENO, may be able to be more profitable than Consumers and its operator NMC. The point is that Entergy Nuclear Palisades will be running a very tight ship with little room to sustain any significant negative events.

“Capital expenditures over the next ten years alone are expected to approximate \$569 million” (prefiled testimony of Stephen Wawro at page 50).

Additionally, the entity’s title is Entergy Nuclear Palisades, LLC. LLC means it is a Limited Liability Company. A LLC limits its liability by keeping the balance sheet lean so that the parent can walk away from the LLC with the lowest feasible financial write-off. The balance sheet is kept lean by transferring cash/assets up the corporate ladder as soon as feasibly possible. The parent also limits liability by not guaranteeing funding to the

LLC. This appears to be the case with Entergy Nuclear Palisades LLC wherein the only disclosed financial guarantees are the \$25 million line of credit and the possible initial minimum decommissioning guarantee.

The possibility that ENP may unilaterally decide to cease operating during the 15 years of the Purchased Power Agreement ("PPA") have been specifically provided for at paragraph 10.2 of the PPA:

Promptly following Seller's determination that operation of the Facility has become materially and economically adverse such that continued operation of the Facility is no longer feasible, prudent and/or sustainable, Seller shall provide twelve (12) months' written notice to Buyer (or longer notice if commercially feasible under the circumstances) that Seller will permanently retire the Facility at the expiration of that notice period (unless twelve (12) months' notice is not commercially feasible under the circumstances, in which case Seller shall provide such notice as is commercially feasible under the circumstances). This Agreement will terminate at the time specified in such notice which will become the Termination Date, and neither Party shall have any further obligations hereunder except for those obligations which survive such termination.

I note that the Purchase Power Agreement does not include a penalty clause payable to Consumers in the event that ENP, LLC exercises its paragraph 10.2 early termination option.

The continued feasibility of ENP's operations during the ten years subsequent to the Purchased Power Agreement was not addressed by the Application.

Mr. Reed states at page 49 of his prefiled testimony that: "The duration for the operation of Big Rock ISFSI was assumed to be greater than 15 years, based on the assumption that Yucca Mountain will not be able to accept the SNF before that date." If DOE will not start accepting spent fuel until after 15 years, then how many additional years will it take until all of the Big Rock spent fuel is removed? How many years until the decommissioning of the Big Rock ISFSI will be completed? Will Entergy Nuclear Palisades LLC still be a viable entity when the Big Rock ISFSI decommissioning is required?

Additionally, we should remember the diversity lesson Enron employees learned. Maintaining their retirement funds in Enron stock was doubly risky. When Enron went under, employees not only lost their job, but they also lost their retirement funds. If Entergy Nuclear Palisades LLC goes out of business, Consumers losses not only 798 MW of capacity, but also the funds to decommission the Big Rock ISFSI.

Witness Peloquin (T 1552-1553) also testified that CECo also should not recover the Palisades ISFSI costs¹¹ from ratepayers either for the same reasons discussed relative to the Big Rock ISFSI costs:

Q. Do you have issues concerning SNF and ISFSI costs for the Palisades plant and site which are similar to that discussed with respect to post and prospective Big Rock SNF and ISFSI costs?

A. Yes. The historic costs of the Palisades ISFSI should not be recovered from the ratepayers for the same reasons I have identified for the historic Big Rock ISFSI. If the \$314 million of Palisades book cost "proceeds" includes amounts for the Palisades ISFSI, it should not be recovered by Consumers Energy in this proceeding.

MEC/PIRGIM witness Callen also testified that these ISFSI costs should be excluded from CECo's request to access or use the proceeds (T 1593-1595):

Q. Was there additional spent nuclear fuel or ISFSI costs that should be excluded from CECo's request concerning the use of proceeds resulting in this case?

A. Yes. First, I concur in the proceeds adjustment made by MEC/PIRGIM witness William A. Peloquin which removes the \$30 million payment that CECo proposes to make to Entergy for taking over future responsibility over the Big Rock ISFSI. This relates to costs associated with prospective ISFSI operation which should be recovered from the DOE as part of a damage suit against DOE in the federal Court of Claims.

Second, I concur that the calculated amount of approximately \$55 million that CECo's claims were incurred to develop and construct the Big Rock ISFSI, (and related costs)

¹¹ CECo resisted revealing what portion of Palisades net book investment relates to said Palisades ISFSI costs; Exhibit MEC-38 suggests the figure is at least \$22 million; however, Exhibit MEC-31 shows a cost of \$23.7 million for "Fuel Shipping Casks" in 2004 alone (MEC-31, page 4, bate stamp 99203622).

should also be excluded any proceeds. Again, these sums are not the responsibility of the ratepayer, but are the responsibility of the utility or the federal government. The Nuclear Waste Policy Act, including Section 111, states that the costs of interim storage are assigned to the utility. The Act says nothing about ratepayer responsibility, or suggests any impact upon state regulatory ratemaking. Also, these costs should be assigned to and pursued by CECo in its damage suit before the United States Court of Claims against the DOE. I believe the assignment of these costs as DOE costs, and not ratepayer costs, is particularly compelling given that several utilities have now won damage claims before that federal court for their past ISFSI and other interim storage costs. For example, a sizeable award was granted to three nuclear utilities in a decision rendered by that court for past ISFSI and re-racking costs in *Yankee Atomic Electric Company v The United States*, U.S. Court of Federal Claims Docket No. 98-126C, October 4, 2006. The Yankee cases are directly analogous to Big Rock. Just like the Yankee units, Big Rock is a closed plant, with dismantlement complete or near complete. Moreover, CECo only recently constructed its ISFSI for the storage of its Big Rock SNF. The facts in the Yankee cases are contemporaneous and very similar to the facts and situation involving Big Rock. For example, the Court decided to honor the DOE's commitment to afford early SNF acceptance for shutdown plants. Thus, CECo should not attempt to assign these costs to the ratepayer by way of subtractions from proceeds as CECo has a fully responsible remedy in obtaining these costs from the federal government.

Nor should CECo obtain these costs from the proceeds or from ratepayers merely because one of their witnesses vaguely promises that CECo will consider any damage awards from the federal court for ratepayers in the event they are successful in their federal law suit. First, ratepayers should not advance these funds when CECo has a clear remedy before the federal courts, and excellent precedent for being successful. Second, were CECo's ratepayers to advance said funds through the proceeds or otherwise then it would reduce virtually all incentive for CECo to vigorously pursue its lawsuit to obtain the damages from the federal government. Third, there is no enforceability arising from the implication of the CECo witness that ratepayers might in the future receive any benefits from any damage awards received by CECo. Fourth, the transfers requested in this case, if approved, raise serious questions concerning whether CECo would continue to have standing before the federal court to pursue its damage claims, and may raise significant risks that the opposing side will raise a number of defensive arguments to defeat CECo's damage claims. For example, it would be difficult for CECo to claim damages for

Big Rock if in fact it had already received an award from ratepayers for all of its past and future ISFSI costs, through the combined \$85 million that CECo seeks to take from the proceeds in this overall transaction.

On the above basis, the Commission should reject CECo's request relative to all past and future ISFSI costs, and SNF storage or disposal costs, and should require CECo (or Entergy) to pursue the recovery of these costs from the federal government in damage suits like several other utilities have accomplished.

Witness Callen (T 1595) also testified that ratepayers should not pay the DOE-default-related ISFSI costs of CECo at Palisades:

The above principle or concept should also apply equally to the past, ongoing, and future ISFSI and re-racking costs incurred by CECo at Palisades (and which may have been considered adversely to CECo in the sales price of Palisades). Again, these costs should be recovered by CECo from the federal government and not from ratepayers.

MEC/PIRGIM has thus provided substantial evidence in support of rejecting CECo's request to receive reimbursement from proceeds (or decommissioning funds) for its ISFSI costs at both Palisades and Big Rock. These costs are attributable to DOE and should be recovered in CECo's damage suit against DOE. Ratepayer payment of these costs to CECo would undermine CECo's incentive and standing to continue to pursue its DOE suit, and would absolve CECo of its own responsibilities over this SNF and its duty to enforce its contracts – including its Standard Contract for SNF disposal. All of these ISFSI costs should also be placed in a trust regulated by the MPSC, in the same manner as MEC/PIRGIM has purposed for SNF fee collections.

credit of \$0.000632 per kWh. The use of a whole number multiplier would avoid tariff design complications.

IV. CONCLUSION AND RELIEF

The Commission should reject CECo's proposed transactions for the above reasons. At the very least the Commission should reject CECo's proposed transactions unless CECo agrees to all of the pre-conditions necessary to fully protect and preserve all ratepayer collections and funds which belong to the ratepayers and not CECo or its shareholders. If CECo is unwilling to commit to such pre-conditions, the Commission should reject the transactions and require CECo to renegotiate the proposed transactions, or to no longer pursue the plant sale, SNF site transfers, and PPA.

Based upon the above arguments, the MEC and PIRGIM request this Commission to reject the transactions proposed by CECo in this case, or at the very least, reject said transactions unless CECo is willing to fully agree to and comply with the pre-conditions of the transactions as outlined in this brief so as to fully protect ratepayers. MEC and PIRGIM request such further and consistent relief that is lawful and reasonable.

Respectfully submitted,

CLARK HILL PLC

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o=Clark Hill PLC
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Attorney for Michigan Environment Council, and
the Public Interest Research Group in Michigan

DATED: February 9, 2007

EXHIBIT B

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

May 7, 2007

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

AFFIDAVIT OF LANA POLLACK

STATE OF MICHIGAN)
)
COUNTY OF INGHAM) ss.

I, Lana Pollack, being first duly sworn, deposes and says as follows:

1. I am the President of the Michigan Environmental Council ("MEC"), a broad-based state-wide non-profit public interest and environmental organization comprising over 75 environmental, public health and public interest organizations and over 200,000 citizen dues paying members in Michigan. MEC's headquarters are located at 119 Pere Marquette Drive, Suite 2A, Lansing, Michigan 48912.

2. MEC, and its various individual member organizations and their citizen members, include thousands of citizens who obtain their electric energy from Consumers Energy Company, and thus are directly affected by and interested in the rates, terms and conditions, and policies governing the provision of electric energy to its members and the general public. MEC, and its members, also have a vital interest in ensuring that utility rates are just and reasonable and that electricity is provided in an efficient manner with minimization of waste to Michigan's

economic and environmental resources. MEC, and its members, need to be protected from economic harm caused by unreasonable and imprudent practices, policies, actions, and omissions of respondent nuclear utilities, and from increasing, duplicative, and unreasonable and imprudent rates and charges, including matters involving nuclear plant decommissioning, spent nuclear fuel ("SNF") disposal, decommissioning of SNF sites, SNF fees, and related remedies to protect ratepayers and the public interest. MEC is also vitally interested in public health and safety issues associated with the above matters.

3. In Michigan, MEC has been granted standing in scores of cases before the Michigan Public Service Commission ("MPSC") and the Courts. Under Michigan law, MEC, is an appropriate "interested persons" or parties with standing to represent the interests of their members and member organizations pursuant to numerous statutes governing the Commission's powers and procedures, the *Michigan Administrative Procedures Act*, MCL 24.201 *et seq.*, and pursuant to Rules 101, 501, and 505, of the *MPSC's Rules of Practice and Procedure*, R 460.17101 *et al.*

4. MEC has intervened in and participated in numerous recent MPSC cases involving several utilities, and have raised issues and recommended remedies to protect Michigan ratepayers and the public interest relative to various costs being charged to Michigan ratepayers. Several of these cases have involved Consumers Energy Company, and have included issues concerning electric rates, the decommissioning of nuclear plants, spent nuclear fuel ("SNF") fees, and costs, SNF disposal, SNF site decommissioning, and related matters (e.g. CEC's rate case U-11560; CEC's securitization cases, MPSC Case No. U-12505 and U-13715; CEC's Power Supply cost cases, U-13917, U-13917-R, U-14274, U-14274-R, U-14701, U-

14701-R; CECo nuclear decommissioning U-14150; SNF Complaint, U-13771; and CECo rate case, U-15245).

5. A more complete description of MEC and its member organizations is available at its website address: www.mecprotects.com (recent copy attached hereto). 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, energy and utility, public health and safety, and consumer protection 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, Environment Michigan, League of Women Voters of Michigan, Michigan Audubon Society, PIRGIM, the Sierra Club, among several other organizations.

6. As President of the MEC, and in support of MEC intervention in various past cases, and also for purposes of this case, I can attest that the organizations within MEC have significant numbers of citizen ratepayers within the service territories of Consumers Energy ("CECo"). I am also fully aware of the activism of these organizations relative to environmental and public interest issues.

7. MEC has several supporters (or sponsors) who live in the same zip codes as the Palisades and Big Rock facilities, along with member groups (and their members) that are located in close proximity to these facilities, including the following:

Alliance for the Great Lakes, West Michigan Environmental Action Council, Clean Water Action/Fund, Kalamazoo Environmental Council and Tip of the Mitt Watershed Council.

8. MEC has the full support of these organizations in pursuing intervention in MPSC proceedings, and in court and federal agency cases (including this NRC docket) regarding spent nuclear fuel ("SNF") fees, storage, and disposal, and the decommissioning of nuclear plants and

SNF storage sites, and the protection of ratepayer collected funds for these purposes, and also to other issues related to protection of the environment, and public health and safety.

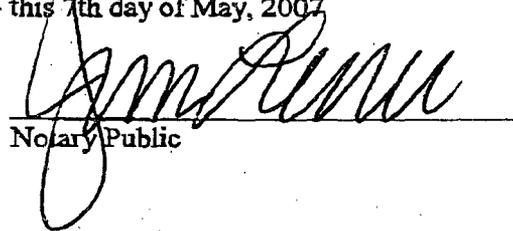
9. MEC has specifically authorized Don L. Keskey of Clark Hill PLC to represent the MEC and its member organizations and members in this NRC docket.

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

DEPONENT FURTHER SAYETH NOT.


Lana Pollack

Subscribed to and sworn before me
this 7th day of May, 2007


Notary Public

JESSICA LEMKE
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF EATON
My Commission Expires Sept. 22, 2012
Acting in the County of Ingham

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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 75 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!

To learn more about our work, visit our [issues](#) page.

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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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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.

4 Towns Citizens Action Team

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STAFF

Judy Bearup, Office Manager & Personal Assistant to the President, contributes significantly to this organization. She serves as telephone system administrator; plans and coordinates internal and external meetings and events; assists President Lana Pollack with scheduling, correspondence and other matters; and provides human resources management support, among other efforts. Judy spent years working for the Michigan State Senate and House of Representatives and brings strong administrative, clerical and organizational skills to her position. An avid gardener, she completed the Master Gardening Program at Michigan State University and also studied at Lansing Community College and Davenport College.

A graduate of Central Michigan University (CMU) and Wayne State University Law School, Policy Director **James Cliff** coordinates our work on clean energy, air quality, water protection, public health, and open government, among other issues. He has taught or lectured at Oakland University, the University of Michigan and CMU; managed a general civil litigation caseload as Staff Attorney for UAW-GM Legal Services; and conducted research in the areas of water law and interstate compacts at Wayne State. Before coming to the council, James served as Policy Director for the Michigan Senate Democratic Office where he supervised a 12-member policy staff and was primarily responsible for environmental protection issues.

Senior Policy Advisor **Dave Dempsey** has been active in Michigan environmental matters since 1982. He served as the council's executive director in 1982 and 1983 and as environmental advisor to Michigan Governor Jim Blanchard from 1983 to 1989. From 1991 to 1994, Dave was program director and state director of Clean Water Action. In 1994, President Bill Clinton appointed him to the Great Lakes Fishery Commission, where he served until 2001. Dave is the author of *Ruin and Recovery: Michigan's Rise as a Conservation Leader* - an environmental history of Michigan since its statehood in 1837 - and *On the Brink: The Great Lakes in the 21st Century*. He also serves on the board of the Buffalo-based Great Lakes United, an environmental group dedicated to protecting and restoring the Great Lakes ecosystem. Dave holds a bachelor's degree from Western Michigan University and a master's degree in resource development from Michigan State University.

Roshani Deraniyagale-Dantas, who coordinates MEC's Environmental Communications and Community Organizing (ECCO) project, graduated from the University of Michigan's (U-M) School of Natural Resources with a B.S in environmental health and policy. Throughout college, she worked with the Ecology Center of Ann Arbor, where she organized a successful fundraiser and worked on farmland preservation and asthma and air quality issues. She also coordinated a community hazards job training program at Detroiters Working for Environmental Justice. Roshani and Sierra Club organizer Rhonda Anderson were lead organizers in helping shut down an illegal hazardous waste facility in a poor, predominantly African-American community in Detroit. Roshani also helped shut down an elementary school built on top of a hazardous landfill in an African-American and Latino neighborhood. Roshani - who completed her master's degree in Toxicology from U-M's School of Public Health - worked with Dr. Craig Harris at U-M's developmental toxicology lab to decipher a rat model for glutathione and its role in developmental toxicity. She is married to José Dantas and mother of three-year-old Iara and nine-month-old Imarain.

MEC's Development and Communications Director, **Andy Draheim**, lives in East Lansing with his wife, Shanna, their son, Joe, and twin daughters, Jillian and Abbie.

After graduating from Manistee High School and Michigan State University's James Madison College, Andy worked on two local political campaigns in Michigan before earning a master's degree in American history from Indiana University. In 1995, Andy began a nine-year career with Common Cause, a citizens' lobby dedicated to fair, open and accountable government. He served Common Cause in a variety of capacities, including volunteer coordinator, grassroots organizer, policy analyst, lobbyist, foundation relations director and organizational development specialist. In August 2004, Andy and his family returned to Michigan after living in San Francisco for almost four years. He also represents the organization on the Michigan Campaign Finance Network Board of Directors.

Program Associate **Kerry Duggan's** interest in MEC and our mission can be traced back to the University of Vermont's College of Agriculture and Life Sciences' Environmental Program, where she earned a bachelor's degree in environmental studies. A Detroit Country Day School graduate, Kerry attended St. Johns University in Queens, New York, before transferring to Vermont. The recipient of numerous academic and athletic awards, including a Teaching Assistantship in Vermont's Environmental Program, Kerry enjoys Michigan's outdoors, especially hiking, cycling, gardening and camping. Kerry is continuing her academic pursuits as a graduate student at the University of Michigan's School of Natural Resources and the Environment. She works part-time for MEC as a case manager and Southeast Michigan representative.

As the council's Education Specialist, **Keith Etheridge** coordinates our teacher education program. The program's overarching goal is to enable teachers to enrich students' learning experiences, deepen their grasp of complicated environmental issues, and help inform their future school, social and even professional lives. A former Michigan Science Teacher of the Year, Keith has more than 30 years of experience in education and has spent a substantial amount of time developing and implementing effective environmental and energy-related curricula.

Elizabeth Fedorchuk, Communications Specialist, joined us in 2004 after a career in publications and information technology communications at the University of Michigan and Michigan State University. Elizabeth is interested in agricultural practices and food processing, especially their impact on children's health. She served on the board of the East Lansing Food Cooperative and edited the Mid-Michigan Environmental Action Council newsletter. Elizabeth loves exploring Michigan's beaches and nature trails with her husband Matt and their two young children.

David Gard directs the Michigan Environmental Council's energy program. He advocates in multiple policy arenas for cleaner, more efficient energy systems, focusing on both stationary and mobile sources. One objective is to highlight the burdens associated with fossil fuel dependence: human illness, damage to natural systems, lost economic opportunity, and geopolitical instability. Prior to joining MEC, David served a four-year tour in the US Navy, worked as a design engineer in Grand Rapids, and earned a joint MBA/MS from the University of Michigan. He holds a BS in Mechanical Engineering from Northwestern University.

Brad Garmon is the Land Programs Director at the Michigan Environmental Council where he has worked since moving to Michigan in 2001. Brad holds degrees in Earth Science and Geospatial Analysis, and a master's degree in English. In addition to policy work on land use and Smart Growth issues across Michigan, he is a member of the national Growth Management Leadership Alliance, the Michigan Economic and Environmental Roundtable, the People And Land Advisory Board, the Partnership for Redevelopment, and a former member of the Board of Directors of the Mid-Michigan Environmental Action Council. He has also served on the state's Sulfide Mining Workgroup in 2004-05 and as a member of the conference planning teams for the Department of Community Health's "Healthy Livable Communities Conference" and the "Connecting Michigan" conference of the Michigan Rails-to-Trails Conservancy. Brad served as staff advisor to Lana Pollack during her tenure on the Michigan Land Use Leadership Council in 2003.

Project Manager **Brianna Gerard**, who joined MEC in January of 2005, works with President Lana Pollack and Development Director Andy Draheim on non-foundation fundraising and helps track and manage a number of MEC's projects and events. She grew up in northern Michigan, earned a bachelor's degree in business marketing from Western Michigan University, and also studied at Richmond College in London, England. She was an account manager for InterAct Public Safety Systems in North Carolina and sales and marketing director at Radio North in Traverse City before coming to MEC. When not helping ensure MEC's financial success, she enjoys cycling, reading, boating, playing golf, and working with husband Craig to train their rambunctious and lovable one-year-old Golden Retriever, Bogey.

MEC Health Policy Director **Tess Karwoski** joined our team in 2005. Her focus on children's environmental health stems from a long career in health care, and from her advocacy for children and the environment. Tess earned her BSN from Michigan State University (MSU) and recently finished her master's coursework in Occupational and Environmental Health at the University of Michigan (U-M). As a nurse, she worked in both acute (Cardiothoracic ICU) and chronic (Autoimmune) disease settings. Tess helped develop innovative programs, including the U-M Reduction Pneumoplasty surgical program for smokers and the Disease Management program for chronic diseases like asthma, diabetes, heart disease, obesity and depression. She also worked with U-M Hospital Systems, assessing their environmental footprint, waste disposal methods and pollution prevention program. Her longstanding commitment to the environment, children's well being, and community involvement underscores her dedication to children's environmental health throughout Michigan.

Program Associate **Kate Madigan** assists Development Director Andy Draheim with grant-writing and foundation fundraising. Before transitioning to this role in April 2007, Kate was MEC's Deputy Policy Director, coordinating key campaigns among MEC member groups and working with Michigan's elected officials to strengthen our state's environmental protections. Prior to joining MEC, Kate worked for five years for the state PIRGs, first as its safe foods advocate in Los Angeles and then as PIRGIM's environmental advocate in Lansing. She also worked as a lead organizer for MoveOn's Leave No Voter Behind campaign in 2004. A Michigan native, Kate grew up in Lake Orion and earned a bachelor's degree in resource ecology from the University of Michigan and a master's degree from the School for International Training in Vermont. Kate has studied and traveled throughout Central and South America. When not working, she enjoys traveling, photography, and spending time with her husband Ross, son Emerson, and dog Bailey.

Hugh McDiarmid joined MEC in 2006 as Communications Director after a 22-year career as a journalist in Michigan, where he specialized in reporting environmental issues. Hugh grew up in East Lansing and graduated from Albion College. He has worked as a reporter and editor at the *Roscommon Herald-News*, the Grand Rapids-area *Advance Newspapers* and for 10 years at the *Detroit Free Press*. Since 2003, he covered environmental issues almost exclusively for the *Free Press* – reporting on a wide range of issues, ranging from sulfide mining in the Upper Peninsula to Dow Chemical Co.'s dioxin pollution in the Tittabawassee River valley. He was part of a team that produced an award-winning series on childhood lead poisoning in 2003. Hugh is married to wife Karen and has two adult children.

Lana Pollack has served as the council's President since 1996. Lana represented Washtenaw County residents in the State Senate for 12 years. As a legislator, Lana sponsored Michigan's landmark polluter pay statute which, before it was repealed in 1995, saved taxpayers \$100 million by forcing polluters to pay for the cleanup of toxic waste. She was a Fellow at the Institute of Politics at Harvard University's Kennedy School of Government in 1997, and is currently Vice Chair of the Board of Directors of the national League of Conservation Voters Education Fund. Inducted into the Michigan Women's Hall of Fame in 2002, Lana was appointed by Governor Jennifer Granholm to the Michigan Land Use Leadership Council in 2003. She currently serves on the Michigan Natural Resources Trust Fund Board and as a trustee for NextEnergy, an organization supporting economic development with alternative energy sources.

Land Use and Energy Program Associate **Ariel Shaw** comes to MEC after graduating from Kenyon College in Gambier, Ohio where she studied Anthropology and English. During the summer of 2006 she interned at Beyond Pesticides in Washington, DC, working to educate people regarding the dangers of pesticides and alternative pest treatments. She is excited that her work at MEC allows her to focus on a broad range of relevant issues affecting Michigan's communities and environmental concerns as well as larger issues such as global climate change. Ariel grew up in Bloomington, Indiana, and now lives in Ann Arbor with her two cats, Samba and Little Bit. Her boyfriend Brian is a graduate student in the Physics program at University of Michigan and they are looking forward to exploring everything that Michigan has to offer.

Land Programs Associate **Ben Stupka** works to advance the goals of MEC's Land Stewardship Initiative. A 1998 graduate of Birmingham Seaholm High School, Ben studied social relations and environmental policy at Michigan State University's James Madison College, where he graduated in the spring of 2003. Ben is an avid backpacker, hiker and skier, and enjoys writing novels and poetry in his spare time.

Deputy Policy Director **Jamie S. Weitzel** coordinates key campaigns among MEC member groups and works with Michigan's elected officials to strengthen our state's environmental protections. Prior to joining MEC, Weitzel worked as an environmental lawyer in Washington, D.C., where she worked on cases involving wetlands, underground storage tanks, and federal criminal investigations under a wide range of environmental statutes. A Michigan native, Jamie grew up in Grand Rapids and earned her law and bachelor's degrees from the University of Michigan. She also has a master's degree from North Central College in Naperville, Ill. When not working, Jamie enjoys spending time with her fiancé, Dan, and her two cats, Xavi and Saul.

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Michigan Environmental Council
119 Pere Marquette Drive, Suite 2A
Lansing, Michigan 48912
(517) 487-9539
(517) 487-9541 FAX
info@mecprotects.org

EXHIBIT C

protected from economic harm caused by unreasonable and imprudent practices, policies, actions, and omissions of respondent nuclear utilities, and from increasing, duplicative, and unreasonable and imprudent rates and charges, including matters involving nuclear plant decommissioning, spent nuclear fuel ("SNF") disposal, decommissioning of SNF sites, SNF fees, and related remedies to protect ratepayers and the public interest, including public health and safety interests.

4. In Michigan, PIRGIM has been granted standing in scores of cases before the Michigan Public Service Commission ("MPSC") and the Courts. Under Michigan law, PIRGIM, is an appropriate "interested persons" or parties with standing to represent the interests of their members and member organizations pursuant to numerous statutes governing the Commission's powers and procedures, the *Michigan Administrative Procedures Act*, MCL 24.201 *et seq.*, and pursuant to Rules 101, 501, and 505, of the *MPSC's Rules of Practice and Procedure*, R 460.17101 *et al.*

5. PIRGIM has intervened in and participated in numerous recent MPSC cases involving several utilities, and have raised issues and recommended remedies to protect Michigan ratepayers and the public interest relative to various costs being charged to Michigan ratepayers. Several of these cases have involved Consumers Energy Company, and have included issues concerning electric rates, the decommissioning of nuclear plants, spent nuclear fuel ("SNF") fees, and costs, SNF disposal, SNF site decommissioning, and related matters (e.g. CECo rate case U-11560; CECo's securitization cases, MPSC Case No. U-12505 and U-13715; CECo Power Supply cost cases, U-13917, U-13917-R, U-14274, U-14274-R, U-14701, U-14701-R; CECo nuclear decommissioning U-14150; SNF Complaint, U-13771; and CECo rate case, U-15245).

6. A more complete description of PIRGIM is available at its website. A copy of the home pages are attached hereto. PIRGIM has been involved for many years in public interest issues regarding environmental protection and conservation, and issues related to consumer protection and utility matters.

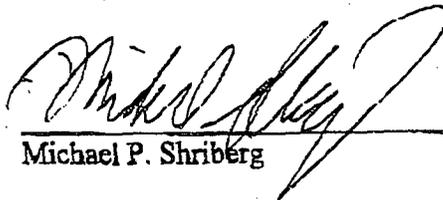
7. PIRGIM has six (6) citizen members living in the same postal zip code as the Big Rock location in Charlevoix, Michigan, and also six (6) citizen members living within the same zip code as the location of the Palisades nuclear plant facilities.

8. PIRGIM, in representing its members, have pursued intervention in several MPSC proceedings and court and federal agency cases (including this NRC docket) regarding issues related to spent nuclear fuel ("SNF") fees, storage, and disposal, and the decommissioning of nuclear plants and SNF storage sites, and the protection of ratepayer collected funds for these purposes, and also to associated issues related to protection of the environment, and public health and safety.

10. PIRGIM has specifically authorized Don L. Keskey of Clark Hill PLC to represent PIRGIM in this NRC docket.

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

DEPONENT FURTHER SAYETH NOT.


Michael P. Shriberg

Subscribed to and sworn before me
this 7th day of May, 2007


Notary Public

MOHAMMAD RASEL
Notary Public - Michigan
Washtenaw County
My Commission Expires Jul 24, 2012
Acting in the County of WASHTENAW

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

May 7, 2007

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

AFFIDAVIT OF DR. MICHAEL P. SHRIBERG

STATE OF MICHIGAN)
)
COUNTY OF INGHAM) ss.

I, Dr. Michael P. Shriberg,, being first duly sworn, deposes and says as follows:

1. I am the Executive Director of the Public Interest Research Group in Michigan (“PIRGIM”).

2. PIRGIM is a statewide nonprofit consumer protection and public interest organization made up of approximately 10,000 members located within and throughout the state of Michigan. PIRGIM’s headquarters are located at 103 E. Liberty, Suite 202, Ann Arbor, Michigan 48104.

3. PIRGIM includes thousands of citizens who obtain their electric energy from Consumers Energy Company, and thus are directly affected by and interested in the rates, terms and conditions, and policies governing the provision of electric energy to its members and the general public. PIRGIM also have a vital interest in ensuring that utility rates are just and reasonable and that electricity is provided in an efficient manner with minimization of waste to Michigan’s economic and environmental resources. PIRGIM, and its members, need to be

protected from economic harm caused by unreasonable and imprudent practices, policies, actions, and omissions of respondent nuclear utilities, and from increasing, duplicative, and unreasonable and imprudent rates and charges, including matters involving nuclear plant decommissioning, spent nuclear fuel ("SNF") disposal, decommissioning of SNF sites, SNF fees, and related remedies to protect ratepayers and the public interest, including public health and safety interests.

4. In Michigan, PIRGIM has been granted standing in scores of cases before the Michigan Public Service Commission ("MPSC") and the Courts. Under Michigan law, PIRGIM, is an appropriate "interested persons" or parties with standing to represent the interests of their members and member organizations pursuant to numerous statutes governing the Commission's powers and procedures, the *Michigan Administrative Procedures Act*, MCL 24.201 *et seq.*, and pursuant to Rules 101, 501, and 505, of the *MPSC's Rules of Practice and Procedure*, R 460.17101 *et al.*

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

DEPONENT FURTHER SAYETH NOT.

Michael P. Shriberg

Subscribed to and sworn before me
this 7th day of May, 2007

Notary Public

Color



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Group In Michigan

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OUR TOP PRIORITY

Energy Efficient Michigan

With skyrocketing energy prices, increased reliance on foreign and out-of-state oil and natural gas, and increasing environmental destruction from our current energy path, now is the time to stop wasting energy in Michigan. PIRGIM is working to implement simple, smart solutions to save energy. [More.](#) | [How you can help.](#)

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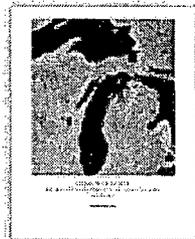


OUR LATEST NEWS

Competition for Electricity Has Failed in Michigan—4/11/07

LANSING—Restructuring our electricity system has led to higher costs for residents, while still leaving them without choice according to PIRGIM's new report, Lessons Learned: Michigan Electricity Restructuring Report. In 2000, Michigan joined several other states in altering our electricity system to create competition with the hopes that customers would see lower costs and more choices. So far, those goals have not been met and it is unlikely they ever will be. [Read the release.](#)

OUR LATEST REPORT



Lessons Learned: Michigan Electricity Restructuring Report—4/11/07

Less than a decade ago, Michigan, along with numerous other States throughout the U.S., began experimenting with increased economic competition within the electric industry. Many states had high expectations in the replacement of traditional cost and services regulation of the electric industry with market driven competition in the generation and supply of electricity. They had hoped that the onerous rate case processes and regulatory procedures would be replaced by market driven efficiencies and that true competition would benefit all customers. With that stated purpose, the Michigan legislature passed the "Customer Choice and Electric Reliability Act" which went into effect shortly after Governor John Engler signed it in June 2000. This law had an impact on both The Detroit Edison Company and Consumers Energy Company and their customers in Michigan.

[Read the report.](#) | [Read the release.](#)

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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.

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Staff Profiles



David Pettit, Consumer Associate

Mr. Pettit strives to protect and improve consumers' rights. Through analytic research, media coverage, and collaboration with community leaders, he stands up for consumers against special interests and promotes a more responsive and democratic government. Mr. Pettit authored an award-winning senior thesis and graduated with high honors from the University of Georgia with degrees in finance and economics. E-mail David



Ed Mierzwinski, PIRGIM's Federal Consumer Program Director

Ed Mierzwinski is PIRGIM's consumer program director in Washington, DC. He often testifies before Congress and state legislatures and has authored numerous reports on consumer and financial issues, from credit bureau errors to skyrocketing ATM and bank fees, as well as on dangerous products, from toys and playgrounds to tobacco. He is often quoted in the national press, has been profiled in The New York Times and has appeared on numerous network news shows. He edited the 1993 edition of AARP's "Your Credit," a guidebook focused on the credit needs of older women. From 1993-1995 he was a member of the Federal Reserve Board of Governors Consumer Advisory Council. Before joining the U.S. PIRG staff in 1989, he was Executive Director of Connecticut PIRG. He is a graduate of the University of Connecticut (BA, MS). E-mail Ed.

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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)

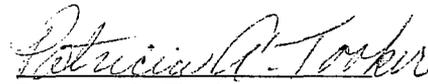
PROOF OF SERVICE

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 May 7, 2007, she served a copy of the **PETITION FOR RECONSIDERATION OF THE MICHIGAN ENVIRONMENTAL COUNCIL AND PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN** 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 7th day of May, 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

PLC

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www.clarkhill.com

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Phone: (517) 318-3014
E-Mail: dkeskey@clarkhill.com

May 7, 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::

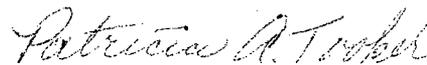
Attached is the email filing of the following:

1. May 7, 2007 cover letter
2. Petition for Reconsideration of The Michigan Environmental Council And Public Interest Research Group In Michigan
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