

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the formal complaint of the)
 Michigan Environmental Council, Public Interest)
 Research Group In Michigan, and Michigan)
 Consumer Federation, for commencement of a)
 generic investigation and contested case, for review)
 and audit of books and records, for establishment)
 of separate additional external nuclear plan site)
 decommissioning trusts, and for adoption of)
 additional ratemaking remedies relating to spent)
 nuclear fuel fees and costs collected in rates)
 by nuclear utilities serving Michigan, including)
 Consumers Energy Company, The Detroit Edison)
 Company, Indiana Michigan Power Company,)
 d/b/a American Electric Power, Wisconsin Electric)
 Power Company, and Wisconsin Public Service)
 Corporation.)
 _____)

Case No. U-13771

At the September 20, 2005 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER

Procedural History

On March 23, 2003, this complaint was filed by the Michigan Environmental Council (MEC),
the Public Interest Research Group in Michigan (PIRGIM), and the Michigan Consumer
Federation (MCF) (collectively the Complainants), naming as respondents utilities that have

nuclear power facilities that serve Michigan customers, and seeking relief on various issues related to spent nuclear fuel (SNF).

On May 30, 2003, The Detroit Edison Company (Detroit Edison), Consumers Energy Company (Consumers), Indiana Michigan Power Company, d/b/a American Electric Power (I&M), Wisconsin Electric Power Company (Wisconsin Electric), and Wisconsin Public Service Corporation (WPS Corp) (collectively the Respondents),¹ filed five separate motions to dismiss pursuant to R 460.17513. The motions to dismiss are based on the following: (1) lack of standing; (2) failure to state a *prima facie* case; (3) failure to conform to Commission rules; (4) lack of subject matter jurisdiction; and (5) failure to state a claim upon which relief may be granted because Complainants' requested relief is (a) an impermissible invasion of management prerogatives, (b) beyond the scope of a complaint proceeding, (c) prohibited retroactive ratemaking, (d) properly brought in an annual power supply cost recovery (PSCR) plan and reconciliation proceeding, and (e) prohibited by 1982 PA 304. I&M alleges additionally that the relief requested is moot. I&M also moves, in the alternative, for nonjoinder on the same grounds.

The Complainants filed a response in opposition to all of the motions on July 11, 2003. Oral argument took place before Administrative Law Judge Sharon L. Feldman (ALJ) on June 23, 2004.

The ALJ issued a Proposal for Decision (PFD) on March 10, 2005. All of the parties filed exceptions to the PFD on April 7, 2005. All of the parties, as well as the Commission Staff (Staff), filed replies to exceptions on May 26, 2005.

¹The five nuclear power plants located in Michigan are Big Rock Point (Consumers), Palisades (Consumers), Donald C. Cook 1 and 2 (I&M), and Fermi 2 (Detroit Edison). These plants are currently storing their own SNF. The Wisconsin Electric and WPS Corp nuclear power plants are located in Wisconsin, and none of the SNF from those plants is stored in Michigan.

Background

In 1982, Congress adopted the Nuclear Waste Policy Act of 1982 (NWPA), 42 USC 10101 *et seq.*, which confirms and details the federal government's responsibility for the disposal of SNF. The NWPA established a comprehensive program and a schedule for transporting, storing, and disposing of SNF in a deep geologic repository, and provided a mechanism for funding the cost of those activities. The NWPA specifically directed the Department of Energy (DOE) to select a site, obtain a license from the Nuclear Regulatory Commission (NRC), construct the repository, and begin accepting SNF for disposal by January 31, 1998. To pay for this, the NWPA established the Nuclear Waste Fund (NWF). The NWF is intended to operate on a full-cost recovery basis, whereby the federal government's costs of developing, operating, and closing the repository are to be fully-funded by fees collected from the generators and owners of SNF. These fees are set by the NWPA at 1 mill per kilowatt-hour of electricity generated and sold from each commercial nuclear power reactor. In this way, the ratepayers of nuclear utilities will pay the fees for the waste disposal program through their consumption of nuclear generated electricity. All proceeds from the fees are to be deposited into the NWF.

To implement this funding mechanism, the NWPA authorized the DOE to enter into standard contracts with any utility that generates spent fuel, and the NWPA requires the utilities to sign the standard contracts with the DOE in order to obtain an NRC operating license. 42 USC 10222(a), (b). These standard contracts set the terms for payment into the NWF and contractually obligate the DOE to begin disposing of nuclear waste in accordance with the terms of the NWPA.

10 CFR 961.2.

The Commission established a policy for nuclear decommissioning funding in 1986. *See*, August 26, 1986 order in Case No. U-6150. The Commission has also approved charges over the

years for SNF disposal fees as part of rates. *See*, July 31, 1978 order in Case No. U-5331, May 18, 1983 order in Case No. U-6923, and February 17, 1982 order in Case No. U-6927. For I&M, the Commission approved a settlement agreement that established an external trust fund for these fees. *See*, December 20, 1983 order in Case No. U-7219. Utilities pay an SNF disposal fee to the federal government pursuant to 42 USC 10222(a)(2) and the DOE standard contract, which has been incorporated into their PSCR clauses pursuant to MCL 460.6j(2) and Commission orders.

In 1987, Congress amended the NWPAs, and selected the repository site of Yucca Mountain, Nevada. In 1987, the DOE also extended its estimate for the repository's availability to 2003. In 1989, the DOE stated that the earliest that it would be able to begin accepting SNF would be 2010, and in 1995 it revised this estimate to 2015. In June 1995, Michigan led numerous state utility regulatory agencies and Attorneys General in a lawsuit filed in the U. S. Court of Appeals for the District of Columbia Circuit, seeking enforcement of the DOE's obligations under the NWPAs. In July 1995, this lawsuit was consolidated by the court with numerous other state and utility lawsuits. In all, 73 petitioners, including 40 state agencies from 29 states, 8 municipal utilities, and 25 investor-owned utilities, joined in the lawsuit against the DOE.

In July 1996, the Court issued its decision, supporting the petitioners' reading of the NWPAs. The Court held that the NWPAs "creates an obligation in the DOE, reciprocal to the utilities' obligation to pay, to start disposing of the SNF no later than January 31, 1998." *Indiana Michigan Power Co v DOE*, 319 US App DC 209, 214; 88 F3d 1272, 1277 (1996). However, the DOE has defaulted on this obligation. No interim, let alone permanent, repository has been built, and there

appears to be none in sight.² The Commission has continued to allow the utilities to recover costs computed in accordance with the NWPA, notwithstanding the fact that the federal government failed to meet the 1998 deadline for SNF disposal. In the meantime, the Respondent utilities incur costs (passed on to ratepayers) to store SNF on-site.

Several courts have found that the DOE has breached the standard contracts.³ The NWF continues to grow, as does the SNF stockpile in each state that hosts a nuclear power plant. As Commissioner Chappelle stated in her testimony before the Subcommittee on Energy and Air Quality, U. S. House of Representatives, April 18, 2002, “passing the costs of the NWF on to the ratepayers has been the only aspect of the NWPA to begin on schedule.” Because the NWPA set the policy that disposal of the nation’s high-level radioactive waste must be the federal

²*See, also, Maine Yankee Atomic Power Co v US*, 225 F3d 1336, 1342 (Fed Cir 2000) (finding the DOE in breach of the standard contract and noting that there are no schedules containing specific dates for disposing of any SNF, and finding it uncertain when they will be adopted and to what extent, if any, they will, or could effectively reflect the breach of the contract); *Nuclear Energy Institute, Inc v EPA*, 362 US App DC 204, 210; 373 F3d 1251, 1257 (2004) (finding the 10,000 year compliance period incorporated into the plans for Yucca Mountain to be in violation of the requirements of the Energy Policy Act); *Northern States Power Co v US*, 224 F3d 1361, 1366 (Fed Cir 2000) (finding the DOE in breach of the standard contract and precluding the DOE from excusing its own delay on the grounds that it has not yet prepared a storage facility of any kind). The Commission has previously sought comment on the problems associated with the government’s apparent default and the ongoing payments to the NWF in its January 28, 1997 order in Case No. U-11314, and the comments and other information submitted in that docket are incorporated by reference in the new matter that the Commission opens today, Case No. U-14559.

³One U.S. District Court judge recently held that the prospect of a federal repository appears so unlikely, that she issued an order to show cause why she should not find the standard contract void as a result of mutual mistake in its inception, and order full restitution to be paid to the utility from the NWF, restoring the utility to the same financial position it held as of June 14, 1983 when it entered into the standard contract. *Sacramento Muni Utility Dist (SMUD) v US*, -- Fed Cl --, 2005 WL 950500, *2 (Fed Cl April 21, 2005) (No. 98-488C). The court found the DOE’s report to Congress indicating that SNF could be shipped to the repository by 2010 not credible. *Id.* The court noted that, for the fiscal year ending September 30, 2003, the NWF had approximately \$18 billion in assets; and that, even if all the utilities with currently pending breach of contract actions against the DOE were awarded restitution, the NWF would still have in excess of \$10 billion in interest that would continue to accumulate in the fund. *SMUD*, 2005 WL 950500, *2, n. 6.

government's responsibility, the utilities must comply. The electric utility ratepayers have upheld their part of the deal. Ratepayers in Michigan have already paid over \$450 million into the NWF, and have also had to pay utilities for the cost of additional on-site SNF storage expenses while waiting for the federal repository.

Proposal for Decision

The ALJ found that the Complainants indicated that they are not prepared to present testimony or other evidence on each issue brought up in the complaint, but they expect the Commission to investigate each issue. The ALJ found the factual allegations in the complaint to be of a general, conclusory nature, not rising to the level of detail required of a formal complaint, and further found that the complaint appeared to be more in the nature of a petition to the Commission to take action to protect ratepayers from the costs associated with SNF.⁴ The ALJ found that, in order for the requested remedies to be carried out, the investigation by the Commission must come first.

The ALJ provided an extensive and thorough analysis of the Complainants' standing, and concluded that, under the two-prong test stated in *Ass'n of Data Processing Service Org, Inc v Camp*, 397 US 150; 90 S Ct 827 (1970), and pursuant to MCL 462.22(b), the Complainants have standing to bring a complaint challenging the rates and accounting practices of the utilities and seeking a Commission investigation of the expected costs of SNF disposal. *See, also, Friends of the Earth v Laidlaw*, 528 US 167; 120 S Ct 693 (2000). The ALJ provided an equally thorough analysis of the Commission's subject matter jurisdiction, including whether field pre-emption or conflict pre-emption may apply to this matter, and concluded that the NWPA does not pre-empt all

⁴The Commission has previously found that the Complainants' proposals for remedying the SNF problem go beyond the scope of a PSCR proceeding or a rate case. *See*, September 16, 2002 order in Case No. U-12725, pp. 30-31; November 20, 2001 order in Case No. U-12615, pp. 15-16; November 20, 2001 order in Case No. U-12613, p. 8-9; and November 23, 2004 order in Case No. U-13808, p. 120.

Commission jurisdiction to inquire into the extent of, and reasonableness and prudence of, costs incurred or to be incurred by the utilities for SNF handling, storage, and disposal. *See, Pacific Gas & Electric Co v State Energy Resources Conservation and Development Comm*, 461 US 190; 103 S Ct 1713 (1983); *Tennessee Valley Authority v US*, 60 Fed Cl 665 (2004). The ALJ found that reservation language in the original Atomic Energy Act saves traditional economic regulation for the states, and that the complaint seeks, *inter alia*, economic remedies. 42 USC 2018, 2021(k).

The ALJ further found that the Commission has state statutory authority, pursuant to MCL 460.557 and MCL 462.24, to grant the relief requested, and the subject matter of the complaint falls within the requirements for a proper complaint case. R 460.17501. The ALJ concluded that the Commission has jurisdiction under state law to grant each of the forms of relief requested in the complaint, including the request that Respondents be required to place SNF costs and fees into external trust funds.

Despite these findings on standing and jurisdiction, the ALJ concluded that the complaint fails to make sufficient factual allegations to meet the pleading requirement of R 460.17505 and R 460.17515. The ALJ found that the complaint is best characterized as a petition addressed to the Commission's discretion, based upon the general and conclusory nature of the allegations. The ALJ found that, while the complaint alleges that the Respondents' rates are unjust and unreasonable, there is no way to determine from the complaint the extent to which the rates are excessive, and the allegations provide no information as to what actions the utilities have taken that have been unreasonable, imprudent, or contrary to their lawful duties. The ALJ found that the complaint failed to identify specific cost items, specific dates, or specific decisions made by any of the Respondents that would allow the Respondents to respond meaningfully to the complaint in order to defend their rates.

The ALJ also found it problematic that the complaint often lumped all of the Respondents together, although they all have separate rate cases, and different decision-making processes. In addition, the ALJ pointed out, the Commission has found that continued payment of SNF fees is not unreasonable, despite the government's ongoing default.

The ALJ found that the complaint does not state a *prima facie* case for the exercise of the Commission's ratemaking jurisdiction, and recommended that the Commission dismiss the complaint without prejudice to the Complainants' ability to file separate complaints with more detailed allegations as to alleged unreasonable or imprudent actions, and/or the specific rate adjustments that need to be made, individually, against each Respondent. The ALJ recommended that the complaint be treated as a petition addressed to the Commission's discretion.

Finally, the ALJ addressed I&M's argument for nonjoinder on the grounds that its factual circumstances differ from the rest of the Respondents, because its pre-1983 SNF costs are already placed into an external trust, and it has other unique reporting obligations under the Commission's order in Case No. U-7219. The ALJ found that, if she were not dismissing the complaint, she would grant the motion for nonjoinder based upon these differing circumstances.

Exceptions and Replies to Exceptions

1. The Complainants

The Complainants do not agree that the utilities are forced to pay the SNF fee after January 31, 1998. The Complainants argue that the utilities are collecting SNF fees in rates for an SNF program that is in default and is not performing, and they have not undertaken sufficient actions to protect those fees or to seek refunds for ratepayers, or escrow funds, in view of the federal default. The Complainants argue that the previous and ongoing federal court actions brought by various Respondent utilities do not protect the fees that are being collected, or serve to

make the funds available in the event that both the utilities and the federal government fail to dispose of the SNF.

The Complainants argue that the ALJ's ruling with respect to the lack of factual specificity in the complaint reflects a medieval concept of pleading inconsistent with modern practice. The Complainants aver that they have given Respondents notice of the nature of their claims sufficient to allow the Respondents to take a responsive position, and, beyond that, the Complainants are entitled to use discovery to gain further evidence and narrow the issues. The Complainants argue that the ALJ failed to recognize that many of the key facts underlying these issues are known only to the Respondents.

The Complainants contend that the PFD reflects a mistaken impression that the Complainants do not wish to proceed with the litigation as a contested case, but rather wish to hand it over to the Commission. The Complainants state that they do wish to proceed. The Complainants argue that the ALJ's decision results in a denial of the Complainants' notice and hearing rights, as well as their due process and equal protection rights, and that the PFD fits into a pattern of continuous violations of the Complainants' constitutional rights by the Commission. The Complainants further argue that, due to the range and complexity of the subject matter and the number of respondents, the complaint is as specific as the subject matter allows, and is adequate for notice pleading. The Complainants argue that the overall history and context of the litigation of this subject matter is sufficient to apprise the Respondents of the claims against them.

The Complainants argue that the Commission should deny the motions to dismiss and allow the complaint action to commence, should simultaneously commence a proceeding on its own motion by treating the complaint as a petition for an investigation, and should consolidate the two dockets. The Complainants argue that this approach is best because the parties have already

expended considerable time and resources on this case, and because the process of filing the case and responding to the motions has resulted in resolving a number of complex legal issues that relate to the Commission's jurisdiction. In addition, the Complainants argue that they should not be required to refile separate complaints for each utility as this would be a wasted and redundant effort.

2. I&M

I&M argues that, where the complaint fails to state a *prima facie* case, it is improper to address the issues of standing and subject matter jurisdiction, and the ALJ erred in doing so. I&M also excepts to the ALJ's recommendation that the complaint be treated as a petition to the Commission to conduct a generic proceeding on SNF issues. I&M argues that the issues presented by the complaint have been rejected by the Commission before and should not be revisited.

3. Wisconsin Electric and WPS Corp

Wisconsin Electric and WPS Corp argue that the dismissal granted by the ALJ should be with prejudice to filing another complaint regarding these same issues. Wisconsin Electric and WPS Corp argue that the utilities cannot be ordered to provide, at their own expense, performance bonds, standby trusts, liability insurance, or other guarantees, because the Commission does not have the authority to require, as a condition to the collection of PSCR costs reasonably and prudently incurred, the posting of bonds, insurance, or other guarantees. Wisconsin Electric and WPS Corp argue that, because the Complainants have not cited any provision of PA 304 that authorizes such requirements, the ALJ erred in allowing the Complainants to potentially refile these same claims. Wisconsin Electric and WPS Corp also argue that such a requirement violates the utilities' management prerogatives, and such a program can only be undertaken voluntarily.

Wisconsin Electric and WPS Corp further argue that the placement of restrictions on revenues previously collected pursuant to Commission approved final rates would be unlawful retroactive ratemaking.

Wisconsin Electric and WPS Corp argue that the allegations in the complaint are not within the scope of a complaint proceeding as defined in Rule 501. Wisconsin Electric and WPS Corp argue that the Complainants conducted full discovery in Case No. U-12613, and therefore have no basis for the claim that they lack access to information that would allow them to include specific allegations in the complaint, or that additional discovery is necessary for them to be able to set forth such facts. Wisconsin Electric and WPS Corp point out that the Complainants had access to facts sufficient to pre-file expert testimony in this case, and to provide similar expert testimony in other cases on several occasions.

Wisconsin Electric and WPS Corp point out that the Commission has rejected the claim that incurring the cost for interim on-site storage of SNF is unreasonable or imprudent (September 16, 2002 order in Case No. U-12725, p. 30), and the Commission has rejected the claim that a utility has acted unreasonably or imprudently in not taking other unidentified action with respect to the DOE (November 20, 2001 orders in Cases Nos. U-12615 and U-12613). Wisconsin Electric and WPS Corp point out that Complainants' exceptions do not identify any specific allegations in the complaint stating what action any of the utilities imprudently failed to take which would have lowered their rates or their cost of storing and disposing of SNF.

4. Detroit Edison

Detroit Edison argues that the ALJ erred in analyzing standing and jurisdiction, given that the complaint failed to state a *prima facie* case. Detroit Edison points out that the entire complaint is

based on the speculative supposition that the DOE will permanently default on its SNF obligations, and that such speculative harm cannot be the basis for the Complainants' standing.

Detroit Edison urges the Commission not to treat the complaint as a petition, on grounds that all of these claims have been previously rejected. Detroit Edison argues that it is beyond dispute that it was reasonable and prudent for the company to pay its federally-mandated SNF fees rather than risk losing its Fermi 2 license. Detroit Edison points out that it sued the DOE in 1995, 1997, and 2002 over SNF issues.

Detroit Edison also asserts that federal law requires the company to pay SNF fees and costs, and that requirement is statutory as well as contractual. 42 USC 10222(a)(2), (a)(3). Detroit Edison argues that the Complainants propose that the Commission should hold the Respondents responsible in the event that the DOE never constructs a repository, which is both speculative and beyond the Respondents' control. Further, Detroit Edison points out, SNF will not be accepted by the DOE unless the owner of the waste has been and remains under contract with the DOE. 42 USC 10222(b). Detroit Edison cites to the many cases that have found, under different factual scenarios, that federally mandated charges that a utility is required to pay must be treated as reasonably-incurred operating expenses. Detroit Edison avers that the principle of federal pre-emption precludes the Commission from disallowing the Respondents' federally mandated fees and costs. Detroit Edison further argues that the relief sought by the Complainants would result in an unconstitutional taking, as such costs cannot be conditioned on the DOE's future success.

5. Consumers

Consumers argues that the ALJ erred in addressing the issues of standing and jurisdiction, because the complaint fails to state a *prima facie* case. For the same reason, Consumers argues that the ALJ erred in recommending that the complaint be treated as a petition.

Consumers argues that Rule 501 provides an additional basis for dismissal of the complaint, and that the ALJ erred in failing to dismiss on these grounds. Consumers argues that the issues identified in the complaint show the Complainants' dissatisfaction with the federal government, but do not meet the rule's standards. Consumers points to the several PSCR and/or rate proceedings in which the Commission has previously rejected the Complainants' arguments.

Consumers further argues that the Complainants lack standing under the two-prong test, since the injury Complainants refer to is speculative. Consumers also argues that Complainants fail to meet the zone of interest prong of the standing test, because there is no statutory basis on which the Commission can force the federal government to live up to its obligations, nor any way for the Commission to lawfully direct the utilities to violate federal law by stopping payments. Consumers further argues that any order by the Commission to the utilities requiring them to place the SNF fees into an escrow account in lieu of paying them to the NWF unlawfully interferes with the utilities' right to make management decisions.

6. The Staff

The Staff filed replies to the Respondents' exceptions as they related to the Commission's jurisdiction and the argument that the Commission lacks the authority to grant the relief requested by the complaint. The Staff agrees with the ALJ and argues that the Commission has broad authority to evaluate the reasonableness and prudence of a utility's conduct, and has jurisdiction to

grant relief through the use of its investigative and ratemaking authority, citing to the statutory language of MCL 460.55, 460.56, 460.58, 460.556, 460.557 and 462.28a.

Discussion

In its February 28, 2005 order in Case No. U-13917, p. 11, the Commission stated:

The Commission remains convinced that the efforts of the MEC/PIRGIM to interject broad based SNF issues into various types of individual contested cases is misplaced. In its November 20, 2001 orders in Cases Nos. U-12613 and U-12615, the Commission rejected similar efforts by MEC/PIRGIM to interject SNF issues into PSCR proceedings. In so doing, the Commission recognized that the SNF disposal issues confronting the electric utility industry are significant and that a solution will not be implemented any time soon. However, the Commission found that the MEC/PIRGIM's proposals did not have much bearing on the reasonableness or prudence of a utility's management. The Commission expressed its belief that (1) the problem was much larger than any individual utility's nuclear operation, (2) feasible alternatives to the construction of a permanent repository are not readily apparent, and (3) the Commission is unable to find that individual utilities are acting imprudently.

The Commission has rejected the claim that the continued payment of the federal SNF fee after January 31, 1998 is unreasonable or imprudent; and has recognized that to unilaterally cease payment into the NWF jeopardizes the utilities' rights under the standing contracts and hence rights to store SNF at any federal repository, and could result in the nonrenewal of the utility's nuclear power plant license and thus impede the utility's ability to provide electricity. April 28, 2005 order in Case No. U-13919, pp. 8-11. The Commission has also rejected the claim that incurring the cost for interim on-site storage of SNF is unreasonable or imprudent (September 16, 2002 order in Case No. U-12725, p. 30), and the claim that a utility has acted unreasonably or imprudently in not taking other unidentified action with respect to the DOE (November 20, 2001 orders in Cases Nos. U-12615 and U-12613). The Commission's conclusions in Cases Nos. U-12613, U-12614, U-12615, U-12725, U-13917 and U-13919 are applicable in the present proceeding, and preclude most of the relief sought. Additionally, other states are similarly situated

to Michigan with regard to ongoing payments into the NWF. To the Commission's knowledge, no state has granted the type of relief sought by MEC/PIRGIM in this case – indeed, there is none cited in the complaint or in the briefing on the motions.

However, as an initial matter, the Commission is not persuaded that the overall history and context of litigation can act as a substitute for allegations. Rule 501 provides that a complaint is limited to matters involving alleged unjust, inaccurate, or improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility, and Rule 505 requires specific allegations. R 460.17501, 460.17505. Complainants have not alleged any specific unreasonable or imprudent action or omission on the part of the named utilities that resulted in unjust or excessive rates. The Commission finds that the complaint does not meet the criteria specified in Rules 501 and 505. The Commission agrees with the ALJ and adopts her recommendation that the motions to dismiss for failure to state a *prima facie* case be granted, without prejudice to refile the complaint. The Commission does not find that five separate complaints must be filed. However, the Commission does order that any refiled complaint must meet the criteria specified in Rules 501 and 505 with regard to the specificity of pleading, and must make allegations specific to each respondent company (i.e., recognize that certain claims are moot with respect to I&M because it has already established external trusts, and other claims are inaccurate with respect to Detroit Edison because it has no pre-1983 SNF costs). Finding that the complaint fails to state a *prima facie* case, the Commission declines to address any of the other issues raised by the motions.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as

amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. The complaint of the Michigan Environmental Council, the Public Interest Research Group in Michigan, and the Michigan Consumer Federation should be dismissed for failure to state a *prima facie* case, without prejudice to refiling, consistent with this order.

THEREFORE, IT IS ORDERED that the complaint of the Michigan Environmental Council, the Public Interest Research Group in Michigan, and the Michigan Consumer Federation is dismissed for failure to state a *prima facie* case, without prejudice to refiling, consistent with this order.

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

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

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ J. Peter Lark
Chairman

By its action of September 20, 2005.

/s/ Laura Chappelle
Commissioner

/s/ Mary Jo Kunkle
Its Executive Secretary

/s/ Monica Martinez
Commissioner

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

By its action of September 20, 2005.

Commissioner

Its Executive Secretary

Commissioner