

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application
of Wisconsin Public Service Corporation DOCKET NO: U-14040
for approvals pursuant to Sec. 6j(13)(b)
of 1982 PA 304 and Sec. 32(c) of the
Public Utility Holding Company Act of
1935 and deferred accounting approvals.
_____ /

Proceedings were held in the above-entitled matter
before Administrative Law Judge Sharon L. Feldman, at the
Michigan Public Service Commission, 6545 Mercantile Way,
Hearing Room E, Lansing, Michigan, on Wednesday, April 21, 2004
commencing at or about 9:00 a.m.

APPEARANCES:

LOOMIS, EWERT, PARSLEY, DAVIS & GOTTING
BY: SHERRI A. WELLMAN (P38989)
232 South Capitol Avenue, Suite 1000
Lansing, Michigan 48933

On behalf of Wisconsin Public Service
Corporation.

MCGUIRE WOODS, LLP
BY: STEPHEN H. WATTS, II
One James Center
901 East Cary Street
Richmond, Virginia 23219

On behalf of Intervenor Dominion.

KRISTIN M. SMITH, (P46323)
Assistant Attorney General
6545 Mercantile Way, Suite 15
Lansing, Michigan 48911

On behalf of MPSC staff.

MICHIGAN PUBLIC SERVICE
COMMISSION

APR 30 2004

RECEIVED

1 DYKEMA GOSSETT
2 BY: CHRISTINE MASON SONERAL (P58820)
3 124 West Allegan
4 Lansing, Michigan 48933

5 On behalf of Great Lakes Pulp Co.

6 MICHAEL E. MOODY (P51985)
7 525 West Ottawa, Sixth Floor
8 G. Mennen Williams Building
9 Lansing, Michigan 48913

10 Assistant Attorney General.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3 9:05 a.m.

4 Lansing, Michigan

5 JUDGE FELDMAN: On the record. Good morning.

6 My name is Sharon Feldman, I'm an administrative law judge
7 with the Public Service Commission. This is case
8 number U-14040, in the matter of the application of
9 Wisconsin Public Service Corporation for approvals pursuant
10 to section 6j(13)(b) of 1982 PA 304 and section 32 (c) of
11 the Public Utility Holding Company Act of 1935 and deferred
12 accounting approvals.

13 This is the time and place set for the
14 prehearing conference in this matter pursuant to the
15 Commission's notice.

16 Could I have the appearances of all counsel
17 present, please.

18 MS. WELLMAN: Sherri Wellman and Harvey J.
19 Messing on behalf of Wisconsin Public Service Corporation.

20 MR. MOODY: Michael Moody on behalf of the
21 Attorney General.

22 MS. SONERAL: Christine Mason Soneral, Dykema
23 Gossett, on behalf of Intervenor, Great Lakes Pulp Company.

24 MS. SMITH: Kristin Smith on behalf of the
25 staff of the Michigan Public Service Commission.

1 MR. WATTS: Stephen Watts representing
2 Dominion. There is a motion to practice pro hoc before the
3 Commission. I understand there were no objections to the
4 motion.

5 JUDGE FELDMAN: Is that correct, no objections?

6 MR. MOODY: That's correct.

7 JUDGE FELDMAN: The motion is granted.

8 Ms. Wellman, I noticed that you filed proof of
9 publication and proof of mailing of the Commission's notice
10 in this procedure with the Commission secretary.

11 MS. WELLMAN: Yes, Your Honor, we did so
12 electronically.

13 JUDGE FELDMAN: Can you represent that the
14 company fully complied with the Commission's instructions
15 regarding notification?

16 MS. WELLMAN: Yes, Your Honor. The company did
17 comply.

18 JUDGE FELDMAN: Does anybody have any concerns
19 regarding notice in this matter that they wish to raise at
20 this point in time. (No response.) Thank you very much.
21 Ms. Wellman.

22 MS. WELLMAN: Yes, Your Honor. We have a few
23 things before Your Honor. I'm not sure if you want to
24 address the interventions at this point in time.

25 JUDGE FELDMAN: Well, there's an intervention

1 that has been filed by Great Lakes Pulp Company, I'm going
2 to assume there are no objections to that intervention.

3 MS. WELLMAN: That's right, Your Honor.

4 MR. WATTS: Yes.

5 JUDGE FELDMAN: That intervention is granted.
6 The Attorney General has filed an intervention in this
7 matter and also I'm assuming there are not likely to be any
8 objections to that petition.

9 MS. WELLMAN: No, Your Honor, no objection.

10 JUDGE FELDMAN: That is also granted. Finally,
11 we have a request to intervene filed by Dominion Energy
12 Kewaunee, Inc., and Mr. Watts is here to speak, I assume,
13 to that petition.

14 Are there any objections to that proposed
15 intervention? Hearing none the intervention is granted.

16 The other item that I have on my list, based on
17 the materials that I have received, include, of course,
18 setting a schedule in this matter and Ms. Wellman has also
19 indicated that she would like to take up the company's
20 motion for protective order. Does anybody have anything
21 else that they think that we need to accomplish in the
22 proceeding this morning? (No response.) Does anybody have
23 any objection to considering the motion for protective
24 order at this point in time?

25 MS. SMITH: Are you saying discussing it or

1 hearing argument?

2 JUDGE FELDMAN: Yes. Does anybody have any
3 objection to my hearing arguments on that matter at this
4 point in time?

5 MS. SMITH: (Shaking head.)

6 MS. WELLMAN: Your Honor, I would like to point
7 out to Your Honor that I have a proposed protective order
8 that has been approved as to form and content by all the
9 parties who have been granted intervention, Great Lakes,
10 the Attorney General and Dominion and, of course, myself,
11 and we still have not really officially heard what the
12 staff's position is on this. I had indicated to Your Honor
13 that as of yesterday I had not heard and that I was
14 concerned about some interests that were not represented
15 here today if the Commission staff had any problem and I
16 guess I need to hear officially from the Commission staff
17 counsel what their position is.

18 JUDGE FELDMAN: Ms. Smith.

19 MS. SMITH: That is correct at this point in
20 time. I'm here to represent the Michigan Public Service
21 Commission staff and to present the reasons for which this
22 counsel does not believe that staff has the desire to enter
23 into this protective order and I'd be glad to proceed at
24 this time.

25 JUDGE FELDMAN: Ms. Wellman, is that what

1 you're saying you would like to do, is proceed to argue
2 that matter this morning, or would you like to set this
3 matter for further hearing at a later date?

4 MS. WELLMAN: Well, Your Honor, staff's
5 position -- I guess I'm confused why she's saying that
6 staff can't enter into the protective order. Are you
7 saying that staff can't agree to the protective order or
8 you don't think the Commission has the authority to grant
9 the protective order? I'm confused. If you can clear up
10 that point for me.

11 MS. SMITH: Your Honor, the Michigan Public
12 Service Commission, as a government agency, acts pursuant
13 to the Freedom of Information Act, The Open Meetings Act
14 and the Administrative Procedures Act. Under the Freedom of
15 Information Act, information in a public record must be
16 disclosed under FOIA unless it falls within an exception
17 enumerated in the act. The exceptions are set forth in the
18 act and they must be narrowly construed. FOIA also exempts
19 from disclosure any record or information exempt from
20 disclosure by other statutory authority. Nothing in FOIA
21 authorizes a staff person to make a determination or bind
22 the commission with regard to the nondisclosure of
23 confidential information or what may be deemed trade
24 secrets; rather section 62 of FOIA, MCL 15.236, designates
25 the chairman of the Commission as the person responsible

1 for determining whether information will be disclosed in
2 response to a FOIA request.

3 Further, however, and more important to the
4 issue in this proceeding regarding protective order,
5 section 13 of FOIA MCL 15.23 (1) (G) (i) (i) authorizes only
6 the chairman of the Commission to issue a promise of
7 confidentiality regarding what could be determined as trade
8 secret or commercial or financial information.

9 There are several Commission orders that I
10 could reference but I'd like to bring to Your Honor's
11 attention U-11716, Wabash Valley Power Association decided
12 December 7, 1998, and I would point, Your Honor, to this,
13 that the Commission set forth that it's contrary to public
14 policy of the state, as exemplified by FOIA and the Open
15 Meetings Act, to conduct a secret rate proceeding.

16 Now, granted with the Wabash Valley Power
17 Association that was a full-fledged rate proceeding but it
18 did make reference to the fact that in that proceeding a
19 consideration of a utility's revenue requirement is
20 indispensable to the determination of whether rates
21 proposed by a public utility are just and reasonable.

22 I'd like to point out in the application of
23 Wisconsin Public Service Corporation, they make specific
24 reference to the information sought to be protected,
25 actually compares the estimated revenue requirement of

1 continued ownership of the KNPP, which is the Kewaunee
2 Nuclear Power Plant, with the estimated revenue
3 requirements of the proposed PPA for which Wisconsin Public
4 Service Corporation is seeking the protective order. So I
5 believe the Wabash Valley decision does give Your Honor
6 some direction as far as the importance of determining
7 revenue requirements and the public policy of not
8 conducting proceedings in a secret manner.

9 I could at this time, Your Honor, also address
10 the various cases that were cited in Wisconsin Public
11 Service Corporation's brief, which I have reviewed and
12 determined that the distinguishing factors for those cases
13 would necessarily direct Your Honor not to impose a
14 protective order in this case.

15 Particularly I'd like to point out that in case
16 number U-13162, which was the Consumers Power request for
17 protective order for long-term power purchase agreement
18 decided December 20th of 2001. There was a protective
19 order granted in that matter, however, that order made
20 reference to case number 12148 and particularly on page
21 eight of that case, footnote eight, it indicated that the
22 protective order was unique in this case because a utility
23 was not seeking to recover costs due to the rate freeze
24 that was in effect at the time that this PPA was being
25 requested to be put under a protective order. I would

1 point out that the key component of that decision is the
2 fact that it was not seeking to recover costs and in these
3 proceedings today under the statute provided, section
4 6j(13)(b) of 1982 PA 304, Wisconsin Public Service
5 Corporation is here to seek approval of a long-term
6 contract that they would then intend to recover costs that
7 they expend on behalf of their customers and in that
8 matter, that decision, Consumers was granted a protective
9 order for a PPA because they are not going to be seeking to
10 recover costs related to the power purchase agreement for
11 which they seek to have protected.

12 Furthermore, there was a case, U-7512 that
13 involved an agreement between the parties and the
14 Commission pointed out that it was not binding on all PSCR
15 cases. That happened to be a PSCR case and I will make
16 reference for the court the date of that, its particular
17 order, and I will be happy to furnish it to Your Honor as
18 soon as I'm able to put my finger on it. In regard to that
19 order the Commission indicated that because it was the
20 party that agreed to this, they were not bound by it and
21 they would not bind any future PSCR cases to this
22 agreement.

23 JUDGE FELDMAN: What is that order number?

24 MS. SMITH: 7152.

25 JUDGE FELDMAN: Thank you.

1 MS. SMITH: Now, as pointed out in their
2 application for a protective order, there have been
3 circumstances in which the Commission has created a
4 procedure through which they have rationalized that a
5 protective order was appropriate. In the cases, however, I
6 would note, particularly in case U-10335, Consumers Power
7 Company electric rate case, order November 29th, 1993, at
8 page 11, there was a discussion of FOIA and a reference
9 that while the protective order shields the information, it
10 shields it only if the law permits it. So at that point in
11 time they were setting up a procedure that I believe based
12 upon their own orders words, if the law permits, I think
13 puts in doubt whether or not there has ever been a real
14 clear decision about whether or not a protective order is
15 appropriate in Public Service Commission cases.

16 I can, at this time, Your Honor, go through the
17 remaining cases that were cited by Wisconsin Public Service
18 Corporation and distinguish why those would not be
19 applicable if you'd like me to continue.

20 JUDGE FELDMAN: You certainly may.

21 MS. SMITH: Okay. Looking to the protective
22 order request, on page two, paragraph five, the Wisconsin
23 Public Service Corporation set forth their basis for why
24 they believe the issuance of the protective order is
25 appropriate in these proceedings, and they begin with

1 referring to case numbers U-9322 and U-9611 decided July
2 18th, 1990. That was a Consumers Power Company case for
3 the year 1998, financial stabilization. In that case an
4 affidavit was provided asserting that the information
5 should be protected and through their discussion the
6 Commission decided that an affidavit with merely assertions
7 was not enough to enter into a protective order and there
8 must be a detailed showing required before issuing a
9 protective order.

10 I would suggest here that if Your Honor so
11 decides that it is the appropriate business to enter into a
12 protective order, that a detailed showing should be
13 required before the protective order is issued.

14 At this point in time there are assertions made
15 but I do not believe that enough detail has been provided
16 either in camera or for review to determine that a
17 protective order is in the public's best interest in this
18 transaction.

19 The reference to 9611 was a combined case of
20 9322 so I will not specifically repeat that issue.

21 The next reference to the Commission order is
22 on page two cited at U-10335, November 29th of 1993. That
23 was a Consumers Power electric rate case and I have
24 previously mentioned that order at page 11 where while the
25 Commission goes through and has a discussion of FOIA, they

1 did not come to the determination that they had specific
2 authority at that time to prevent the information from
3 being disclosed, with the caveat at the end, protective
4 order will shield the information if the law so permits.
5 So I don't think it definitely decided that this was the
6 appropriate forum for which a protective order could be
7 issued.

8 On the next page, page three of Wisconsin
9 Public Service Corporation's application for protective
10 order, there is reference dually to cases number 10491 and
11 10492 decided July 19th, 1994. Those cases were
12 consolidated. This was a Northern State Power Company GCR
13 application under act 304 and in that case the Commission
14 went through a litany of analyses regarding Act 304, the
15 Administrative Procedures Act, section 86; the Railroad
16 Act, section 23, and made the following observations: It
17 pointed out that FOIA does not bar issuance of a protective
18 order.

19 It further went on to say nothing in Act 304
20 specifically demands that the information be disseminated
21 to the public. It also pointed out, however, that both the
22 APA and Railroad Act required the Commission to compile and
23 maintain records that support the orders in which they --
24 through which they speak. Through that analysis the
25 Commission came to the conclusion that they have the

1 authority, however, they were to exercise it very sparingly
2 and yet, through the development of the FOIA issues and
3 procedures that were discussed, they also made a
4 determination that, we'll do this if it's permitted by law.
5 So that same caveat followed with that case.

6 I next looked for case U-13221, dated March
7 20th, 2002. I was unable, through reasonable attempts, to
8 locate that with that order date and reviewing my
9 research it does not appear I was even able to back into it
10 by finding it any other way, so I will defer any comments
11 on that until we're able to conclude what order date that
12 would be to analyze it.

13 Next in the Wisconsin Public Service
14 Corporation's application for protective order, continuing
15 in paragraph five on page three, the company made reference
16 to case number U-10282, an order dated June 30th, 1994, and
17 I would point out to Your Honor that that was a telephone
18 case and in accordance or consistent with what FOIA
19 describes, an exception provided for by statute is another
20 alternative in which information would be exempt under
21 FOIA. In the Michigan Telecommunications Act a specific
22 provision at section 210 is provided that gives the
23 Commission authority to enter into protective orders in
24 those matters. So I would say summarily those don't apply
25 in utility cases such as we have here.

1 I would continue into paragraph six of page
2 three of Wisconsin Public Service Corporation's application
3 where case number U-10634 is cited, decision October 12th,
4 1994. At that time the Commission began expressing more
5 concern over the appropriateness of issuing a protective
6 order for a power purchase agreement outside of a discovery
7 process. Particularly the Commission noted that the
8 agreement under consideration in that case was of long-term
9 consequence to the rate payers, I believe it was 17 and a
10 half years. They also made a finding on page two that the
11 Wisconsin Public Service Commission had not made a
12 definitive ruling with respect to specific provisions of
13 the agreement for which the function of the Commission is
14 responsible for doing under statute for power purchase
15 agreements.

16 Finally, it made a determination that full
17 disclosure of power purchase agreements were required and
18 they distinguished case number U-10634, which was
19 previously cited, noting that in case U-10634, discovery
20 matters were at issue and protection of discovery matters
21 was not known to be necessary at that time to the outcome
22 of the case and they noted that discovery matters that were
23 under dispute about whether to be protected were not
24 necessary to make a complete application for approval of
25 what they were seeking approval for in that matter. So the

1 distinguishing issue was the discovery material and whereas
2 in -- I'm sorry, the case was distinguished, the analysis
3 that was distinguishing was made in case U-10634 and the
4 actual case that they were distinguishing was --

5 JUDGE FELDMAN: 10419 and 492 perhaps?

6 MS. SMITH: I believe so, Your Honor. Yes,
7 Your Honor. Those were the distinguishing issues of those
8 two cases and I would point out, just having opened up that
9 case number U-10634 at this time, there is also a reference
10 to a previous case order in 1991, U-9832, which there was a
11 determination made that a complete application be filed in
12 order for the Commission to be able to conduct its business
13 in approving the application in that case. That had to do
14 with when the time began for counting the nine-month
15 guidelines. The order indicated that if a complete
16 application, including a complete version of the power
17 purchase agreement, is not filed within 30 days from the
18 date of this order, the Commission will dismiss the
19 application without prejudice. So there was reference to
20 the previous requirements of a complete application in case
21 number U-10634. Moving on.

22 JUDGE FELDMAN: Can I interrupt you for a
23 minute? Are you asserting that Wisconsin Public Service
24 Corporation has not filed a complete application yet in
25 this proceeding?

1 MS. SMITH: Yes, Your Honor. At this point in
2 time what has been filed are references to redacted
3 material. The redacted material was not provided at this
4 point in time and we don't have a complete application for
5 which the staff can even begin its review of the
6 application.

7 JUDGE FELDMAN: Continue, please.

8 MS. SMITH: Thank you. Continuing, paragraph
9 six, page three, of the Wisconsin Public Service
10 Corporation's application for protective order reference is
11 made to case number U-13162, for which I have already made
12 reference to in my opening argument regarding staff's
13 authority to either enter into a protective order or for
14 Your Honor to determine, in this matter, that case U-13162
15 is decided December 29th, 2001. It made reference to the
16 fact that a protective order was allowed for a PPA given
17 the circumstances that the utility was not going to seek
18 recovery of the cost and that they were under a rate freeze
19 at the time and that's why they couldn't seek recovery of
20 the cost. We do not have those circumstances in this case.

21 And, finally, I believe, Your Honor, this is
22 the last reference to cases. In the end of paragraph six,
23 case number U-13907, that was -- most recently a settlement
24 agreement was signed by the parties for which staff counsel
25 did sign that and I did not speak to whether or not the

1 issue of the authority to do so was discussed on the record
2 or considered by the Administrative Law Judge, but I
3 believe it's important to establish what authority there is
4 so that doesn't begin down a slippery slope that could
5 result in the Commission -- we would like the Commission to
6 be fully advised of their options, their responsibilities
7 and their authority in these circumstances under protective
8 orders so that we have clear footing to stand on into the
9 future.

10 I would specifically note in closing, Your
11 Honor, that the FOIA exceptions refer to statutes. I
12 pointed out one statute, the Michigan Telecommunications
13 Act, for which there is an exception that permits the
14 Commission to enter into protective orders and I would
15 point out most recently an amendment to the act that
16 permits utilities to secure those assets that are deemed
17 appropriate. The legislature made a specific exemption
18 that allowed the Commission to issue protective orders in
19 those proceedings and I would offer to Your Honor that in
20 standing with common statutory construction, that when
21 something is included in a statute, the omission of which
22 is intentional, and specifically with reference to Act 304
23 and the section 6j(13)(b) that requires approval of PPAs
24 that exceed six months, it has set forth that this is a
25 contested proceeding and to comply with the public policy,

1 in order to comply with the Open Meetings Act, the Freedom
2 of Information Act and the Administrative Procedures Act.
3 I would propose, Your Honor, in any contested matter,
4 entering into protective orders would not be appropriate
5 unless, if we deem it appropriate, I believe that the
6 authority does not lie with the staff but it's incumbent
7 upon the chair of the Commission to make that
8 determination.

9 JUDGE FELDMAN: Thank you, Ms. Smith, that was
10 very comprehensive. I just have a few questions for you.
11 Do you understand -- you've referred to the authority given
12 to the chair of the Commission and other heads of agencies
13 under the Freedom of Information Act. Do you understand
14 that the Commission has, in its prior orders dealing with
15 protective orders, tried to distinguish that type of
16 protection which can be afforded under FOIA from what it's
17 doing when it has approved those types of protective
18 orders?

19 MS. SMITH: If I understand your question, you're
20 asking whether the Commission has specifically
21 distinguished between protecting information under FOIA
22 requests and entering into protective orders. What I
23 understand, in answering that question, is through the
24 orders in which they've discussed FOIA, they have done to
25 -- they have entered into protective orders sparingly and

1 they have done so with the caveat if it's permitted by law.
2 If these protective orders permit the protection, then the
3 information will be protected and I think that speaks to
4 the lack of clear understanding about what the authority is
5 for protective orders.

6 If I may so argue, if we enter into something
7 and we don't know if we can really protect it, what use is
8 the information? What use is it protecting the information
9 if we don't know if we can really protect it?

10 In the discussion of FOIA they've set up
11 procedures under which if someone were to make a request
12 for information under FOIA, that the commission would give
13 a heads up to the company seeking to keep it protected and
14 require them to go in and defend their belief that the
15 information is of a protected nature, however the
16 Commission noted that they would fulfill their
17 responsibility under FOIA whether that be making a
18 determination that it should remain protected or making --
19 well, I would assume if they're heading to court, they've
20 made that determination and someone is challenging it.

21 So keeping that in mind, a protective order, I
22 would argue, is contrary to holding open and contested
23 cases for which the public has access to that information
24 through the proper notice that has been issued, and given
25 the caveat that we're not sure we can really protect this

1 stuff, I believe it's appropriate to seriously review and
2 use this sparingly.

3 Given the determinations in the cases that were
4 cited by the Wisconsin Public Service Corporation, the
5 power purchase agreements have not been provided protection
6 in the general case other than the one exception I provided
7 to you during the rate freeze, so I question the ability
8 and the appropriateness of entering into one of the
9 purchase power agreements for which there is not a specific
10 exception to provide protection for this information and to
11 which it is the primary responsibility of the Commission to
12 review the rate to determine whether it's appropriate under
13 the statute.

14 I don't know if that answered your question but
15 I'd be glad to follow up.

16 JUDGE FELDMAN: Has the Commission made an
17 effort to distinguish how it prefers to handle treatment of
18 confidential material or material that is claimed to be
19 confidential outside of the hearing or during the course of
20 a hearing?

21 MS. SMITH: I am familiar with my reading of the
22 cases that I have been able to accomplish before this
23 hearing that there have been circumstances in which items
24 have been filed under seal for which a protective order is
25 attached to this document so it has the purpose of flagging

1 to the attention of someone seeking to get it or offering
2 to hand it out that there may be some issues relating to
3 this that need further consideration by the Commission. I
4 understand that that has been a practice and I don't know
5 if it's one or two cases or a dozen cases. I don't know of
6 any more than a couple cases in which that has been a way
7 to acquiesce, to satisfy the company that is seeking the
8 protection and I think balancing whether or not the
9 authority rests with the Commission to do so, but I think
10 that has been a stop guard that has been at least put in
11 place to give some assurances or at least provide a vehicle
12 for slowing the process down and slowing down the
13 dissemination of information that a company may believe is
14 protected.

15 JUDGE FELDMAN: Let me ask you this. Is it
16 your understanding that the protective order that you're
17 objecting to would also govern how the material is treated
18 on the record of any hearings, further hearings that might
19 be held in this matter?

20 MS. SMITH: What I understand in cases where
21 protection has been provided, I believe those were cases in
22 which it was discovery material that was being cross
23 examined on the record, in camera review was made of those
24 documents and then the cross examination was conducted with
25 a cleared courtroom to honor the agreement to try to keep

1 the information protected. I want to point out those were
2 discovery materials, those weren't necessarily pertinent to
3 the application or the process of approval that this
4 Commission was seeking to grant. That's what I understand.
5 In those circumstances transcripts that were created that
6 involved discussion of that discovery material were also
7 given some seal type, I call it protection, or I would more
8 consider it flags, in order to assist the person who may be
9 disseminating the information that this may be protected,
10 and further in those circumstances I believe there may have
11 been references by the Commission that if the information
12 would be used in a brief, there may have been provisions
13 but I don't have that specifically in my memory to be able
14 to specifically -- I know there is a case regarding that,
15 I do remember, however, I believe it was regarding
16 discovery materials, and I point that out because that also
17 reminded me of a case in which the Commission was asked to
18 look at discovery materials that were otherwise protected
19 in a court proceeding in a Dow case, I don't remember if it
20 was Dow Chemical or what it was, but I believe there was
21 information that other parties were using that was
22 otherwise protected for which the Commission and the staff
23 did not have the ability to use and the Commission said,
24 no, this is either going to be provided to us or it doesn't
25 create a level playing field for the staff to do their

1 review because other people were using it and yet it was
2 being claimed protected from staff. I'm going to admit I'm
3 going out on a limb here because I don't have exactly the
4 complete details and reference to the Dow case that I'd
5 like to provide to you at this time, but to answer your
6 question, for information that I believe was discovery
7 material, in camera review, delicate handling of the
8 information was provided and I think that stretches
9 everything I can remember about different proceedings and
10 how that type of material was addressed.

11 JUDGE FELDMAN: Have you taken a position
12 whether, putting aside the legal and policy positions of
13 the Commission, your understanding of FOIA, et cetera,
14 whether this information, or do you have a good sense of
15 the full scope of information that the company seeks to
16 protect and whether it, at a certain level, merits
17 confidential treatment?

18 MS. SMITH: What I understand about the
19 application and from my discussions with staff, for which I
20 would be glad to, if you give me a couple minutes after my
21 presentation to discuss with them further, they're seeking
22 to have protected a power purchase agreement that is
23 intertwined with the sale of the Kewaunee Nuclear Power
24 plant and its referenced to being a significant part of
25 that transaction and I would suggest that subject to the

1 way they structured this deal, I don't know what
2 alternatives there were to structuring it, alternatives
3 there were to having the power purchase agreement not so
4 much of the sales agreement. I don't have any background
5 to determine that. I don't know what harm there would be
6 at this juncture in the proceedings to providing protection
7 or not providing, what harm at this proceeding there would
8 be to not providing protection to the purchase power
9 agreement to make a conclusion, how integral a part of it
10 it is. I think Wisconsin Public Service Corporation has
11 done business in our Commission, proceedings in front of
12 them, and understood the extent to which they were required
13 to get approval of power purchase agreements, and I think
14 the tenuous groundwork for providing such protection, and
15 yet proceeded in the manner in which they did to make it an
16 integral part of the sales agreement. So we don't know
17 what harm there is at this point in time to having that
18 information provided, we've only speculated.

19 I think the staff members I have here, if we
20 have an opportunity, if Your Honor takes a recess to
21 discuss this any further, I would be glad to respond
22 appropriately at that time.

23 JUDGE FELDMAN: Thank you. At this point I
24 would like to hear from Ms. Wellman, it's her motion. Ms.
25 Wellman, do you feel you have an understanding of staff's

1 position in this matter?

2 MS. WELLMAN: You know, I think I do. You
3 know, at first it sounds like staff is objecting because
4 the Commission doesn't have authority to issue a protective
5 order and, Your Honor, you know, 10 years or so ago you and
6 I were involved in a proceeding, it was 10491, 10492.

7 JUDGE FELDMAN: Ten years ago?

8 MS. WELLMAN: Exact same issues, Your Honor,
9 and I have to say it didn't relate to discovery, it related
10 to purchase agreements that needed protection and, Your
11 Honor, I believe that you were the attorney in the
12 proceeding and arguments were made by yourself and the
13 Attorney General that, you know, the Commission didn't have
14 authority, that FOIA barred protective orders, and the
15 Commission definitely found that it had authority, and,
16 again, it definitely found it has authority in an Act 304
17 proceeding to protect sensitive information. And, as Your
18 Honor recalls, it specifically went through --

19 JUDGE FELDMAN: Perhaps not, Ms. Wellman.

20 MS. WELLMAN: You remember. And the Commission
21 even set forth how they wanted the protective order to look
22 and we did that and ever since then protective orders that
23 have come from our office have followed that pattern. The
24 protective order that we've offered here follows this
25 pattern. I have to say, staff's position not only is

1 surprising in that it seems opposite to the law and
2 Commission precedent, but it's inconsistent with its own
3 actions over the last two years.

4 I personally have entered into protective
5 orders with staff counsel in case number U13221, a
6 protected gas purchase agreement, U13907, a protected
7 purchase power agreement, U13556, that, again, protected a
8 purchase power agreement and the proposed order that we
9 have sent to Your Honor is almost identical to those that
10 staff counsel has entered into. Their action is even more
11 surprising in light of the fact that just yesterday staff
12 counsel agreed to a protective agreement in U13691, and I
13 have to say, the company is caught off guard by this, not
14 only by what the Commission staff has recently done and
15 their counsel has recently done in the past two years with
16 respect to entering into protective orders for purchase
17 power agreements, protecting the entire agreement, but, you
18 know, we had many conversations with staff and their
19 counsel and at certain points they were supporting this,
20 staff counsel was, and it wasn't until --

21 MS. SMITH: Your Honor, I would object to any
22 discussions that may have included issues relating to
23 settling this issue or not. I don't know if it's an
24 appropriate point of using this hearing room for that
25 purpose. I think I would just place it on the record and

1 ask Your Honor to make a determination about that.

2 JUDGE FELDMAN: I think I'll let Ms. Wellman
3 continue. I'm not sure that I would accord those types of
4 representations significant weight in making a
5 determination on this issue.

6 MS. SMITH: Thank you, Your Honor.

7 MS. WELLMAN: So we are significantly surprised
8 by this turn of events that staff now believes that the
9 Commission lacks authority to issue a protective order.

10 Pursuant to a June 24, 2003 confidentiality
11 agreement, which is between Wisconsin Public Service
12 Corporation and Dominion and Wisconsin Power and Light,
13 Wisconsin Public Service Corporation has a duty to notify
14 Wisconsin Power and Light to advise them that the
15 protective order is being challenged and to allow Wisconsin
16 Power and Light to petition for the protection. As well, I
17 would think that Dominion is probably going to make the
18 same proposal at this point in time.

19 We are very surprised that we have to go to
20 this extent and if the staff believes and wants to see a
21 detailed showing, then we would ask that we have the
22 opportunity to provide an evidentiary hearing on this
23 matter on an expedited basis. I think that I could propose
24 something to Your Honor in that way and I would like Your
25 Honor to know that the parties, Dominion, Wisconsin Power

1 and Light, and Wisconsin Public Service Corporation, have
2 made great effort to maintain the confidentiality of these
3 documents before all the jurisdictions which have requested
4 to review these documents and have received protective
5 protection of those documents before FERC, the Illinois
6 Commerce Commission and also the Wisconsin Public Service
7 Commission. Failure to protect these documents is going to
8 jeopardize the Kewaunee sale and any future negotiations.

9 Staff's attempt to point out that the
10 Commission doesn't have authority or somehow distinguish
11 the cases in my mind, fails, and we can address that in
12 brief, but I would like to briefly point out to Your Honor
13 that Staff's reliance or trying to distinguish case 11716
14 or reliance on it saying that there had to be disclosure
15 because the information related to a revenue requirement,
16 that was a case in which they were setting rates. This
17 case we're not setting rates.

18 The other case which the staff cited again, the
19 December 2001 order where you know she is attempting, Ms.
20 Smith is attempting to distinguish the case, she indicated
21 that the Commission was willing to grant protective relief
22 because the company was not seeking to recover costs in
23 this case. This is exactly the same situation, the company
24 is not seeking to recover costs in this case.

25 If Your Honor would turn to paragraph 12 of the

1 application, we indicate exactly our position. We are not
2 seeking to recover the purchase power capacity charges
3 until there is an adjustment in this company's base rates
4 which would occur in a general rate case and we have not
5 filed that case, which would be separate from this
6 proceeding. So I guess, Your Honor, like I said, we have
7 to provide notice to Wisconsin Power and Light. I'm sure
8 they will want to get involved in this and if Your Honor
9 deems it necessary, we would like to have the opportunity
10 to provide evidentiary evidence on the irreparable harm
11 that would be caused to the company, Dominion Wisconsin
12 Power and Light, by revealing this information and making
13 it public. Essentially it would take everything that has
14 been done in all these other commissions and undo it. All
15 these other commissions and jurisdictions have honored the
16 confidentiality realizing that it's necessary to have the
17 protection because this is a proposed sale, Your Honor, it
18 is not a done deal.

19 JUDGE FELDMAN: Have any of these regulatory
20 jurisdictions specifically addressed the confidentiality
21 issue in orders?

22 MS. WELLMAN: Yes, Your Honor. I have the
23 Wisconsin Public Service Commission order, the standing
24 protective order right here.

25 JUDGE FELDMAN: You say standing protective

1 order, but has the Commission itself made a determination
2 as to the full extent of information that is going to be
3 protected once the Commission issues a final decision in
4 that case?

5 MS. WELLMAN: Their administrative law judge
6 has, Your Honor.

7 JUDGE FELDMAN: What is the cite, if you can
8 give me one, to the order you're referring to.

9 MS. WELLMAN: I can give you a copy of it, Your
10 Honor. The cite is 5-EEI136.

11 JUDGE FELDMAN: That's the docket number at the
12 Public Service Commission of Wisconsin?

13 MS. WELLMAN: Yes, Your Honor.

14 JUDGE FELDMAN: Maybe this will illustrate, Ms.
15 Wellman, one of the questions I have for you. Just
16 flipping through the document that you handed me it has
17 provision, I think it's numbered paragraph eight on page
18 nine here, which is right under the order, and as I skim
19 down, and I have to acknowledge I haven't read this order
20 thoroughly, so feel free to set me straight, but it seems
21 to set forth a procedure whereby the parties who are
22 governed by this order can challenge the confidential
23 nature of the protected information and obtain a ruling
24 from the Commission that if that information is not
25 confidential, it may be disclosed. Has the Commission

1 actually ruled on the extent to which any of what is called
2 the protective information here is really of a confidential
3 nature?

4 MS. WELLMAN: I don't think anyone has
5 challenged it.

6 JUDGE FELDMAN: And my memory of your
7 scheduling motion is that the Wisconsin Commission is
8 expected to issue a final decision on this in August.

9 MS. WELLMAN: Yes, early August.

10 JUDGE FELDMAN: Have administrative hearings
11 been held already?

12 MS. WELLMAN: Administrative hearings? I
13 believe they're scheduled for early June.

14 PERSON: June 17th.

15 MS. SMITH: Your Honor --

16 JUDGE FELDMAN: Go ahead.

17 MS. SMITH: -- if I may --

18 JUDGE FELDMAN: Yes.

19 MS. SMITH: -- offer a reply to two brief
20 issues I'd like to bring to your attention if that is
21 appropriate.

22 JUDGE FELDMAN: Can you hold that thought? I'm
23 not sure if Ms. Wellman has finished what she wanted to
24 speak to and I also have a question that I want an answer
25 to before I get too distracted.

1 MS. SMITH: Thank you.

2 JUDGE FELDMAN: One of the cases that Ms. Smith
3 went through is MPSC case 1160364 and it does seem to
4 indicate that the Commission has a policy to require full
5 disclosure of a purchase power agreement. Do you have any
6 subsequent Commission orders that you can cite that would
7 suggest that the Commission has changed its policy in that
8 regard?

9 MS. WELLMAN: I think, Your Honor, what I would
10 speak to is the Wisconsin Electric case that you're
11 referring to.

12 JUDGE FELDMAN: That is Wisconsin Electric
13 Power Company?

14 MS. WELLMAN: Right. Your Honor, I think that
15 that case can be distinguished in that, and I think that
16 the examination, as you had noted with Ms. Smith, was
17 distinguishing it from the 10491 case, in that it was not
18 clear that other jurisdictions were also protecting that
19 information, whereas here clearly there are other
20 jurisdictions that are protecting this information. I
21 would have to note, Your Honor, that only two percent of
22 the company's retail business is done here in the State of
23 Michigan, so that means essentially 98 percent of all the
24 other jurisdictions that have jurisdiction over the company
25 have protected this information.

1 Additionally, I would have to say that, you
2 know, in December of 2001, in connection with the Consumers
3 case that was issued, and I believe Ms. Smith cited that,
4 the Commission did grant protective relief for several
5 PPAs. I think that the Commission has began to recognize
6 or does, in fact, recognize, that there is a need to
7 require confidential treatment of business information.

8 Finally, Your Honor, the staff itself has been
9 entering into protective agreements. As I cited to Your
10 Honor, 13907, 13556 that have protected the entire purchase
11 power agreement and the Commission has issued final rulings
12 in those cases approving those PPAs.

13 JUDGE FELDMAN: Let me back up a minute.
14 You've given me the Public Service Commission of Wisconsin
15 decision in docket number 5EI136. Were there any other
16 agency rulings addressing or that you believe address the
17 confidentiality of this specific material that you can
18 cite?

19 MS. WELLMAN: Yes, Your Honor. There have been
20 agreements that have been upheld before the FERC and also
21 before the Illinois Commerce Commission.

22 JUDGE FELDMAN: Now, I know that somewhere in
23 the material that you filed you've attached copies of FERC
24 and possibly Illinois Commerce Commission but I do remember
25 seeing something from Iowa. Were any of those orders that

1 you referred to?

2 MS. WELLMAN: No, Your Honor. Those were the
3 final orders that were issued by those jurisdictions that
4 have made their review or given their necessary approvals
5 in connection with the Kewaunee sale.

6 JUDGE FELDMAN: And in case number 13162 were
7 the actual PPAs themselves kept confidential in their
8 entirety?

9 MS. WELLMAN: What case number?

10 JUDGE FELDMAN: 13162, the Consumers Energy
11 Company case, the December 20th, 2001 order you just cited.

12 MS. WELLMAN: Your Honor, no. I do not believe
13 the entire document was kept confidential.

14 JUDGE FELDMAN: But you're asserting in this
15 matter that the entire document, the entire PPA or PPAs
16 should be kept confidential?

17 MS. WELLMAN: At this point in time, yes, Your
18 Honor. This is a proposed sale and the PPA is part of the
19 proposed sale. I believe Mr. Watts can speak to this to a
20 certain extent from Dominion's point of view, but as a
21 proposed sale, each and every term in there is considered a
22 negotiable term that the companies are concerned about
23 competitors having access to at this point in time or that
24 the companies are concerned about competitors having access
25 to.

1 JUDGE FELDMAN: Was there anything else you
2 wanted to say, Ms. Wellman, this morning, about this?
3 We'll come back to it. Ms. Smith wanted to make a couple
4 of points and before I turn to her, Mr. Watts, did you want
5 to say something?

6 MR. WATTS: Actually I would. The other
7 parties may have something to say as well, but I'd be
8 happy, at your convenience, to say something on the
9 subject.

10 JUDGE FELDMAN: Thank you. Ms. Smith.

11 MS. SMITH: Thanks, Your Honor. I would just
12 highlight two points that I would like to bring to Your
13 Honor's attention for caution in what Ms. Wellman
14 presented. I reviewed the application for the protective
15 order for the PPA, there were not references to cases
16 U-13221 or U-13907 or 13556, and in my review of Commission
17 orders for which this particular authority was reviewed,
18 those cases did not appear as though the Commission made
19 determinations with specific regard to whether or not it
20 was within the appropriate authority to do so. I believe
21 those may have been settlement agreements that were adopted
22 by the Commission but they did not appear to me, through my
23 research, that the Commission went through a deliberative
24 process in making a determination about the protective
25 orders. These were adopted in the settlement negotiations

1 and I would just footnote that if that was of some weight,
2 I would have appreciated seeing that in the application for
3 the protective order because I would have been glad to
4 provide to Your Honor information with regard to those and
5 our opinion regarding those; but, more importantly, in
6 trying to distinguish this case from the case in which
7 Consumers was granted a protective order for long-term
8 PPAs, case number U-13162, decided December 20th, 2001, the
9 utility was granted those protections because it was not
10 seeking to recover the cost and it was during a rate
11 freeze. In this case, based upon the wording that has been
12 suggested, while they're not seeking to recover the cost
13 now, they will do so subsequently in a subsequent rate
14 proceeding and it appears as though they're trying to tie
15 bar this from being reviewed during that proceeding and
16 henceforth, not even henceforth, this being the one and
17 only test to determine whether or not it's a reasonable
18 contract to enter into. While they're not specifically
19 going to start collecting on it until a rate proceeding I
20 understand from staff that this is looking to tie bar staff
21 from even having an opportunity to review it at that time.

22 JUDGE FELDMAN: What do you mean by tie bar,
23 can you tell me?

24 MS. SMITH: In specific reference to the
25 protective order that I understand we've had an opportunity

1 to start looking at, paragraph 12 makes reference to the
2 completion of these proceedings and that all documents
3 containing protective materials be provided under the terms
4 of this agreement shall be returned to the Wisconsin Public
5 Service Corporation. It shall be returned and an affidavit
6 indicating that the protected material has been destroyed
7 or returned or following reasonable search can't be
8 located. I question how this material later in a rate
9 proceeding won't be brought up. While this was protected
10 it's already been approved. I can't review it now, I just
11 don't know, the uncertainties that are predicated upon that
12 assertion that they won't be seeking to recover costs,
13 maybe not during this proceeding particularly but I believe
14 when they do choose to look to have that recovered, it is
15 important and significant that it doesn't distinguish it
16 from the commission's general policy not to provide
17 protection to PPAs and the exception that they granted
18 Consumers in their case during the rate freeze during which
19 there wasn't going to be a request for rates to be
20 recovered at any point in time.

21 So those are the two basic avenues that I
22 wanted to bring to your attention that I felt needed
23 reflection upon by Your Honor that we had thought were
24 significant and I will stand corrected if during my
25 reference in case number 10634 in which they made

1 distinguishing comments regarding discovery materials,
2 discovery matters -- I would be glad to go back and
3 reference that again and make sure that my reference to
4 that was appropriate and if it wasn't, I would stand
5 corrected if that's so the case.

6 JUDGE FELDMAN: Ms. Wellman.

7 MS. WELLMAN: I just wanted to make one
8 comment. I want to make a clarification. Just because
9 information is protected does not mean it can't be
10 reviewed. It's reviewed by the parties, it's reviewed by
11 the Commission, or the judge, it even, according to the
12 protective order, could be reviewed by any other person
13 that made an FOIA request and we were unable to keep it
14 protected from the court. So I guess I want to make sure
15 when we say something is protected, we don't compare it or
16 say it's the same thing as it can't be reviewed, because it
17 certainly can be reviewed.

18 JUDGE FELDMAN: Mr. Watts, did you have
19 anything you wanted to add to this?

20 MR. WATTS: I did, thank you. First of all,
21 it's a pleasure to have the opportunity to appear before
22 this Commission and I appreciate your action in granting
23 the motion allowing me to do so.

24 If I can put this in a bit of context, we're
25 talking here about a transaction that is a proposed sale of

1 a nuclear facility and it's important, I think, to keep in
2 mind that the competition for the acquisition of such
3 facilities in the United States is an extremely
4 competitive, not to say intense or fiercely competitive,
5 marketplace. It's an extremely competitive marketplace.
6 There are relatively few number of potential parties who
7 are in the business of acquiring and owning and operating
8 nuclear facilities and they are constantly seeking to
9 obtain information about each other's business strategies
10 and projects and approaches to acquiring and operating and
11 selling power from nuclear generation facilities. My
12 client, Dominion, is one of those parties and participated
13 in what was a highly competitive process conducted by the
14 sellers of the Kewaunee facility that resulted in the
15 proposed transaction. No bidder in that process had
16 information about the proposals of other bidders. It was
17 conducted in such a way that no parties could gain
18 information about what the other parties were submitting or
19 presenting as bids, and an integral part of that
20 transaction, which involved not just the sale of the
21 facility but a commitment of the capacity from that
22 facility back to the sellers through 2013, that PPA or
23 power purchase agreement is an integral part of the
24 transaction and that PPA is the document we're talking
25 about now and it reflects Dominion's most proprietary

1 corporate secrets about its approach to the marketplace,
2 how it prices, what it thinks future prices are going to
3 be. It reflects all of those things, and all of these
4 provisions are unique to this transaction.

5 This is not an EEI master agreement. This is a
6 unique agreement negotiated specifically for this project.
7 So it is, as I say, among the most proprietary pieces of
8 information, documents, that Dominion would have and the
9 contents of it are not available from any other source and
10 have been protected in all the other state and federal
11 regulatory proceedings that have been involved and those
12 include the Nuclear Regulatory Commission, the FERC, the
13 Public Service Commission of Wisconsin, the Iowa Utilities
14 Board, The Minnesota Public Service Commission, the
15 Illinois Commission, and I have to say that having
16 participated in those proceedings, either on paper or
17 personally, that I'm surprised and I have to admit a bit
18 frustrated to find myself and my clients in what appears to
19 be some sort of test case herein today.

20 So I want to try to help resolve this any way
21 that I can, in part because of a scheduling interest we
22 have and the sellers have. The facility is scheduled for
23 an adage in the fall of 2004.

24 JUDGE FELDMAN: I had seen that referenced so
25 many times. Can you tell me when in the fall it's

1 scheduled for?

2 MR. WATTS: Yes, it's scheduled, I think the
3 information is mid October is the information that I think,
4 mid October frame, and that is not just a fuel adage, it
5 involves some significant capitol intensive projects,
6 including vessel head replacement and split pin replacement
7 and an in-system inspection. I mention specifically the
8 vessel head replacement because Dominion has done four of
9 those and no one else in the United States has done
10 anywhere near that many, so Dominion is highly experienced
11 in that, which is a very capitol intensive and significant
12 project to replace the head of the reactor vessel.

13 Dominion also has extensive experience in split
14 pin replacements as well as the in-system inspections. I
15 mention this because what we're proposing to do is close on
16 this transaction in time for Dominion to do -- to handle
17 the fall adage that would have beneficial affect from the
18 standpoint of the public interest in this state as well as
19 in the others where utilities are involved in the
20 transaction of operations of shifting the risks of that
21 adage from the sellers and their customers to Dominion who
22 is in the business of taking on and discharging those
23 risks. Those risks are significant both in terms of
24 capitol expenditures that would be involved and the cost of
25 the adage itself, but also if the adage lasted longer

1 than is projected, the risk of the purchase power cost
2 associated with an extension of the adage would also be
3 assumed by Dominion as well. Dominion would become
4 familiar with the facility early and have a better
5 understanding of the facility as a result of conducting the
6 adage and would therefore facilitate its performance under
7 the contract, facilitation which is also in the interest of
8 the sellers and their customers. The employees at the
9 facility would achieve, would have gained the stability of
10 the new owner taking control sooner.

11 So there are some significant benefits that we
12 believe are in the public interest and the sellers too in
13 conducting and having Dominion conduct the fall adage. In
14 order to do that we have to get all the approvals in place
15 in time to know that we're going to do it because if we
16 can't get them in place in time to know that we're going to
17 do it, then it will be too late for us to do it and that's
18 why we're trying so hard in all of these jurisdictions to
19 obtain the orders in early August that will allow us to do
20 that.

21 I expressed my frustration earlier in the
22 sense that we seem to be struggling with a process question
23 here when what we really want to do is sit down and talk
24 with the staff and with the parties and explain the
25 transaction in as much detail as they want, provide the

1 necessary information for them to be able to do that;
2 however, as I've explained, this information is extremely
3 commercially sensitive and so we're not able to do that
4 unless we can get the protection here that we have gotten
5 in all the other jurisdictions. So that is frankly the
6 perspective that I have.

7 I can give you an example of why this
8 protection is important to us. In the Wisconsin proceeding
9 a disappointed bidder sought to intervene in that
10 proceeding with the express intent of getting access to
11 these documents, these very documents. The order in
12 Wisconsin is structured differently than the order that is
13 presented to you in that it has actually more protections
14 if the person seeking access is a competitor. When that
15 party found that they couldn't get the access that they
16 wanted to these documents, they withdrew from the
17 proceeding. So this is not an academic question, it's a
18 significant matter from the perspective of Dominion as well
19 as the sellers and the reason for this is that if, and we
20 certainly hope this doesn't occur, this transaction isn't
21 consummated, for this material, this information to become
22 public would prejudice the sellers as they go back to the
23 market and try to get another buyer interested and I can
24 assure you that those buyers are going to be interested in
25 whether or not they can get protection for their most

1 intimate corporate secrets. So it has impact beyond its
2 impact on Dominion.

3 Now I'm a newcomer to your Commission. I
4 actually had the pleasure of being here some 15 or 20 years
5 ago on another matter, but I haven't been here in a while.
6 I obviously am not familiar with all of the case numbers
7 that have been referred to. I have read the NSP case and
8 it seems to me, as an observer from afar, to be pretty
9 close to the facts here and it does involve recovery of
10 upstream costs, which is the issue that we're dealing with
11 here.

12 I'd like to say, to sort of reiterate something
13 Ms. Wellman said, is what we want to do is sit down with
14 these folks and explain the transaction and be able to
15 refer to these documents. We're not taking the position
16 that the staff can't review it. What we're taking the
17 position on is that it should be protected in the way that
18 is proposed in the protective order. If there is a
19 specific provision in the protective order that is
20 problematic from the staff's point of view, we're certainly
21 willing to talk about that to see if that can be
22 accommodated, but what I'm struggling with is a procedural
23 matter that is frustrating us getting to the main event
24 here, which is to try to address the staff's concerns.

25 With respect to the merit, that's what we'd

1 like to get to is the merit, and we're particularly
2 interested because of the scheduling matter that I am
3 referring to. I guess I have, I'm closing now. I guess I
4 have a question with respect to the staff's position and
5 I'll address it to you, but perhaps they can address it as
6 well. I understand, I'm not quite clear myself, on whether
7 the staff is saying they don't have authority to enter into
8 the order or whether the Commission does and I guess I
9 would ask you, if you were to issue the order approving the
10 protective order, or issue the protective order, do they
11 mean to say that if they don't approve it, it has no affect
12 on them? Because that is important.

13 I understand, at least in most commissions that
14 if the Commission issues an order, as I understand the
15 delegation of the commission power, then it's binding on
16 the participants in the case and if the staff doesn't
17 consider such an order to be binding on them, if they
18 disagree with it, then I guess I need to know that because
19 that is important for my client's perspective as well.

20 JUDGE FELDMAN: The staff and I work for the
21 Commission and are bound by the Commission orders. I think
22 that part of the question I need to answer.

23 MR. WATTS: Thank you. And, as I said, the
24 staff is concerned about the future use of these documents
25 in later proceedings. That is something that might be

1 resolvable from a process standpoint and I just would like
2 to say we're happy to try to discuss that if that is the
3 hang up here.

4 I hope that's been helpful to hear a discussion
5 of this from our perspective and, as I say, I appreciate
6 the opportunity to be here.

7 JUDGE FELDMAN: Thank you very much. Does
8 anybody have anything further to add on this matter?

9 Ms. Wellman, you had suggested that it may be
10 necessary or you may desire to hold an evidentiary hearing
11 on this matter on an expedited schedule. We're about to
12 turn to scheduling. Do you want to give me a sense of what
13 type of expedited schedule you could propose to handle this
14 matter?

15 MS. WELLMAN: I think, like I said, Wisconsin
16 Power and Light would want to be involved. I think that
17 they could -- Dominion I'm sure would want to file
18 affidavits. I think we could file affidavits by April 26
19 and have an evidentiary hearing -- we could probably have
20 an evidentiary hearing --

21 MR. WATTS: May we have just a moment?

22 JUDGE FELDMAN: Yes, you may.

23 MS. SONERAL: Your Honor, may I make a comment?

24 JUDGE FELDMAN: Can you wait?

25 MS. SONERAL: I just wanted to articulate Great

1 Lakes Pulp's position.

2 JUDGE FELDMAN: Would you hold off? Mr. Watts
3 is conferring with Ms. Wellman. Go ahead.

4 MS. SONERAL: For the record, Great Lakes Pulp
5 Company is not taking a position on this issue, however, we
6 have agreed to abide by the protective order because in
7 order for us to do our analysis in a timely manner we need
8 the information as soon as possible and I note that for the
9 record because we will be discussing scheduling matters and
10 Great Lakes Pulp needs time to prepare its own case should
11 it decide to put a case on.

12 JUDGE FELDMAN: Thank you very much. I think I
13 am generally aware of everybody's concerns as far as the
14 schedule goes but I'll give you further opportunity to
15 comment.

16 MS. WELLMAN: Your Honor, I think that we
17 could, and I guess I'm speaking for Wisconsin Power and
18 Light out of turn, they haven't authorized me to say this,
19 but I think the parties in interest could file affidavits
20 on the 26th and we could have a hearing on the 30th and
21 then I guess briefs -- we would suggest briefs being due
22 maybe on the 5th of May and reply briefs maybe on the 10th
23 of May.

24 JUDGE FELDMAN: Ms. Wellman, is the protective
25 order that the Attorney General and Great Lakes Pulp and

1 Dominion have signed, the same one that was attached to
2 your motion?

3 MS. WELLMAN: Your Honor, the Attorney General
4 made an addition, made a few changes and we agreed to them
5 and Great Lakes as well.

6 MR. MOODY: Like I said, in further looking at
7 the Wisconsin one I was thinking of putting in some of the
8 provisions of applicability, paragraph 10, and I chose the
9 portion, actually it's in there, about this is disclosed in
10 response to a valid order, it's paragraph G. I didn't
11 suggest the whole thing but maybe including that, that
12 page, might resolve some problems in this case in a sense
13 that it protects the Commission and the Attorney General,
14 essentially, from challenges in court and stuff.

15 JUDGE FELDMAN: Let me ask, Ms. Smith, do you
16 have any objection to my looking at that document that
17 they've agreed to?

18 MS. SMITH: At this point in time, Your Honor,
19 I don't know what basis we would have for objecting to
20 that. I would say, however, that staff would have to have
21 an opportunity to fine tooth comb it and protect against
22 our concern that in a later rate case that the cost of what
23 they pay for their electricity -- this provider will seek
24 to be protected at that time and then we're walking down
25 the Wabash Valley Case in which it was a rate case and the

1 Commission said, we don't want to do a rate case in
2 secrecy. I think we need to look at what protections are
3 built into this one so that doesn't become an issue again
4 and again at that point in time. I would also just caution
5 that since we are talking about going down the path of an
6 evidentiary hearing, I think that would assist the staff in
7 determining where the harm really is in disclosing the
8 costs that they're agreeing to pay Dominion. They have
9 structured it in the way they have in a big deal. That was
10 their choice to structure it that way and I'm not
11 questioning that at this time but we need -- staff doesn't
12 have any basis for understanding what harm there is in
13 disclosing how much they expect to pay for 12 and a half
14 years, but I don't know that we have any authority not to
15 allow you to do that. I don't really know, Your Honor, I
16 can't answer that particularly.

17 MR. MOODY: Your Honor, maybe further
18 protection too. I didn't think about what would happen in
19 the rate case. Maybe there could be a provision in there
20 to have to bring this argument up in the rate case about
21 the confidentiality so the parties that intervene in there
22 -- because part of my thought process is that parties could
23 intervene here but if they are prevented from looking at
24 information in the future case, then that's a problem.

25 JUDGE FELDMAN: Let me ask you, Mr. Moody,

1 since you have volunteered for this assignment, do you
2 believe that the Commission's decision in this proceeding,
3 if it approves the power purchase agreement issue in this
4 issue will be constrained to include the associated charges
5 in the company's rate?

6 MR. MOODY: I have not given it extensive
7 thought.

8 JUDGE FELDMAN: Is that what they would be
9 asking for? Is that the purpose of this proceeding under
10 section 6j (13)?

11 MR. MOODY: Your Honor, I have to admit I
12 didn't think it through as detailed as has happened in this
13 hearing so I probably couldn't. I could brief this issue
14 and we could -- you know, I know time is of the essence but
15 I wouldn't be able to give you an answer.

16 MS. SMITH: Your Honor, if I may possibly
17 assist or give you an opportunity to think more about this.
18 If we assume the power purchase agreement is protected or I
19 mean is approved, essentially it locks then in to recover
20 their costs for the next 12 and a half years without any
21 subsequent followup in a rate case and then coming in in a
22 rate case, that is my understanding.

23 JUDGE FELDMAN: And you're saying 12 and a half
24 years because the provisions of the agreement would expire
25 after a certain point? I've forgotten the exact date.

1 MS. SMITH: That's my understanding and I would
2 point out in cases in which PSCR -- in PSCR cases where
3 there have been protective orders discussed and such, the
4 Commission makes reference to a reconciliation process in
5 which maybe certain costs will not be granted or will be
6 granted, but in this particular proceeding under section j
7 (13) (b) of 1982 PA 304, my understanding is once these are
8 approved it just flows through to the rate case and it's
9 not considered or reviewed for prudence or whether it was
10 appropriate. This is the appropriate avenue to determine
11 that and to have what they're going to pay for the
12 electricity analyzed.

13 MS. WELLMAN: Your Honor, may I comment on Ms.
14 Smith's statements?

15 JUDGE FELDMAN: Yes.

16 MS. WELLMAN: I believe them to be inaccurate.
17 First of all, the Commission in its orders, as you well
18 know, always reserves jurisdiction and may issue further
19 orders as necessary. The approval we're seeking of the PPA
20 only relates to prior approval of the capacity charges.
21 Under Act 304 we're required to have a ruling from the
22 Commission prior to a final reconciliation order that
23 capacity charges are reasonable. I don't think that would
24 preclude the Commission down the line from making a
25 different decision if they felt they were no longer

1 reasonable, especially in light of the fact that the
2 Commission reserves jurisdiction and may issue orders as
3 necessary. Of course, we would argue to the contrary but
4 the Commission always leaves that open for themselves.

5 The other thing is the PPA contains more than
6 the capacity charges, it contains energy charges. We're
7 not seeking approval, prior approval of energy charges.
8 Both the capacity charges and energy charges are dealt with
9 in the company's PSCR proceedings which are reviewed on an
10 annual basis and as Mr. Watts pointed out to me, the
11 capacity charge approval, we're not going to be doing
12 anything with those capacity charges. Your Honor issues an
13 order approving the capacity charges associated with the
14 PPA, we have indicated that we do not plan to recover those
15 from the customers or seek to recover them from the
16 customers until after there has been an adjustment in the
17 company's base rate case before beginning another
18 proceeding.

19 JUDGE FELDMAN: Ms. Wellman, can you give me a
20 concise statement of the legal significance of the
21 Commission approval of capacity charges under Section 6j
22 (13) of the company's expected future rate requests?

23 MS. WELLMAN: Prior approval, what is meant by
24 that?

25 JUDGE FELDMAN: What your understanding of the

1 legal significance of that is.

2 MS. WELLMAN: My understanding would be that we
3 need to get approval of the capacity charges before we can
4 start recovering them before a reconciliation case, if
5 those capacity charges are in excess of six months. I have
6 to admit, Your Honor, the way I've seen it is that often
7 once you get approval, it's not challenged again, but I
8 have never seen it challenged so I don't know if it's
9 immune from challenge, but I've never seen it challenged
10 again.

11 JUDGE FELDMAN: I'm going to take a 15-minute
12 recess. When we come back, we'll take up scheduling. I'll
13 say something more on this protective order issue but while
14 we're off the record you might think about a couple of
15 questions, one is how to accommodate any type of
16 evidentiary proceeding via be it through affidavit or
17 otherwise in what is looking like a fairly tight schedule
18 for this matter, and also whether there is any type of
19 interim determination we can make regarding this material
20 so that the parties can have access to it on some sort of a
21 short-term, temporary basis while we work towards
22 resolution that may govern the course of this proceeding.

23 MS. SMITH: Your Honor, as you reflect during
24 the break and if you're considering the proposed schedule
25 presented regarding an expedited evidentiary hearing, I do

1 have commitments, cross examination commitments in a
2 pending case April 29th and 30th, so I would not be able to
3 commit to an April 30th date, but that's the only date that
4 would have to be considered.

5 MR. MOODY: I have similar conflicts, I have
6 the case too.

7 JUDGE FELDMAN: Hopefully you can talk about
8 that. Hopefully there is something that would fit
9 everyone's schedule to accommodate the concerns, so we will
10 stand adjourned for about 15 minutes.

11 MS. SONERAL: Thank you, Your Honor.

12 (Break taken at this point.)

13 JUDGE FELDMAN: Back on the record. I gave you
14 some additional time when we came back, it seemed that
15 people were still conferring, counsel were still
16 conferring.

17 MS. WELLMAN: We're kind of still conferring,
18 Your Honor. I don't want to speak out of turn for Ms.
19 Smith, and you can correct me if I'm wrong, but we've had
20 some discussions and it seems to me that maybe even a
21 protective order could be signed if it meets staff's
22 desires to have a, maybe not yourself, but maybe one of the
23 commissioners sign.

24 MS. SMITH: Your Honor, what I presented for
25 discussion and what we're looking at is I have authority to

1 enter into a provisional protective order in order to
2 proceed in a manner in which an evidentiary hearing can be
3 held and an appropriate determination can be made based on
4 the information that they present and at that time get a
5 ruling from Your Honor regarding a permanent protective
6 order in the proceedings and into the future. What Ms.
7 Wellman is referring to and what I brought as part of a
8 discussionable issue is the FOIA exemptions listed at
9 15.243, MCL 15.243 regarding trade secrets or commercial or
10 financial information voluntarily provided to an agency for
11 the use, and I want to highlight, in developing
12 governmental policy. I don't know necessarily if this is a
13 governmental policy type situation where that type of
14 information could be provided the appropriate protection
15 but I would point out under subsection I, the information
16 is submitted upon a promise of confidentiality by the
17 public body. In two I, the promise of confidentiality is
18 authorized by the chief administrative officer of the
19 public body or by an elected official at the same time the
20 promise is made, but I think that's several steps down a
21 path that we haven't determined and I was cautious in
22 indicating whether or not there really is a governmental
23 policy that would take us down this path. I think that is
24 what Ms. Wellman was trying to allude to in what we were
25 throwing around as ideas, Your Honor.

1 JUDGE FELDMAN: So on that last point, you're
2 not asserting that that particular version of FOIA would
3 apply?

4 MS. SMITH: We are not asserting that it would
5 apply but it was put out there for discussion so if someone
6 did assert that this may be an opportunity to resolve this
7 case in a manner that would speed it along. It was a
8 formulation of a discussion point but, no, not at this
9 point. I think it would be incumbent upon Wisconsin to
10 point out what the policies would be in enacting that
11 provision, I believe.

12 MS. WELLMAN: Your Honor, I guess I'm trying to
13 keep on clarifying this in my mind. So are you saying, Ms.
14 Smith, if we believed that that provision applied, that
15 staff would be, and we had a commissioner instead of Your
16 Honor sign the protective order, then we could proceed, we
17 would have a final protective order that we could proceed
18 with?

19 MS. SMITH: I'm suggesting -- I am not
20 suggesting a commissioner, necessarily, but as the statute
21 reads, the chief administrative officer, and I think there
22 is an issue about where that designation lies. If that
23 issue were presented, I think it would be appropriate, it
24 would need to be considered by the administrative law
25 judge, but I'd not be willing at this point to say, until

1 something is presented, what that public policy would be
2 and if it's appropriate for this section. I don't have the
3 authority and don't have that conclusion since I don't know
4 what your arguments are preceding it. So with those two
5 clarifications I'm representing first it's the chief
6 administrative officer, not a commissioner necessarily, at
7 all. I don't have a determination on that and the other
8 one I couldn't respond to what an issue would be until it's
9 presented.

10 MS. WELLMAN: So I guess what you're saying is
11 ALJ Feldman does not have the authority to sign the
12 protective order?

13 JUDGE FELDMAN: I don't think she had gotten to
14 that point. She was off on what I consider, well, she was
15 off on a discussion of whether certain provisions of FOIA
16 could actually be deemed to apply to exempt this
17 information from disclosure under that statute, which is
18 not a determination the Commission has ever made before.
19 She was not willing to say that it would necessarily apply
20 so I don't think we need to discuss it further until she
21 has an opportunity to consider whether that is something
22 that she wishes to pursue; is that correct?

23 MS. SMITH: That is correct. The point of
24 bringing it up was merely an observation of discussion and
25 I think the more relevant point is I have been granted

1 authority or we have authority to enter into a provisional
2 protective order with appropriate terms and conditions to
3 necessitate an expedited evidentiary hearing, at which time
4 a more thorough determination can be made by Your Honor as
5 to how to proceed and under what conditions we proceed
6 under.

7 JUDGE FELDMAN: Thank you. Do you have a
8 document or do you want some time to put that together?

9 MS. WELLMAN: We'll need time.

10 JUDGE FELDMAN: Do we have a sense of how we
11 should set a schedule for this matter?

12 MS. SMITH: Uh-huh.

13 MS. WELLMAN: Yes. I think we do. At least I
14 guess, Your Honor, have you heard whether the Commission is
15 going to review the record in this matter?

16 JUDGE FELDMAN: I have not. I obviously can't
17 compel them to do that. I think that we should set the
18 best schedule that we can and the Commission will advise us
19 if it decides to read the record on this matter. That's
20 the most that I can really say at this point. I will let
21 you make any additional arguments for the record that you
22 might like to make in support of your request but you don't
23 have to do it now, we can talk about the schedule first.

24 MS. WELLMAN: Okay. The schedule that we would
25 be proposing, at least for the expedited hearing on the

1 protective motion, would be affidavits to be filed by all
2 parties on April 27th and an evidentiary hearing will be
3 held on May 4th. Initial briefs due on May 7th and reply
4 briefs due on May 12th. Hopefully Your Honor can issue an
5 expedited decision.

6 JUDGE FELDMAN: I don't know what you mean by
7 expedited, but I would do my very best to issue it as soon
8 as possible following that date, but I don't want to hold
9 up scheduling the rest of this case.

10 MS. WELLMAN: I agree, Your Honor, and as staff
11 and interveners, the direct case of staff and interveners,
12 we had sent out some things initially and we
13 heard from staff and they had indicated that they would
14 want a June 8th filing date.

15 JUDGE FELDMAN: Let me just interrupt a minute
16 here. Mr. Watts, is it your intention to file testimony on
17 behalf of Dominion in this matter?

18 MR. WATTS: With respect to the protective
19 order evidentiary hearing?

20 JUDGE FELDMAN: No, with respect to the case in
21 chief.

22 MR. WATTS: Candidly, I hadn't expected to have
23 to do that but I can't say that I wouldn't need that. I
24 don't expect to but circumstances could arise that would
25 cause me to want to do that, particularly after this

1 morning.

2 JUDGE FELDMAN: I just didn't know if the
3 parties had taken into account the order of parties'
4 testimony and whether they would affect you since your
5 position is presumably very closely aligned with the
6 company to try to file first.

7 MR. WATTS: I can assure you that I would like
8 to not have to put testimony in. I'm certainly not seeking
9 the opportunity to do that because I don't want to slow
10 this down and our interests are, as you say, aligned. I
11 don't know whether the other parties are interested in
12 doing that or not. You normally would have a date for
13 interveners to submit testimony?

14 JUDGE FELDMAN: Yes, and that's what I think
15 she is proposing, a June 8th date.

16 MR. WATTS: Okay. I presume if we did put in
17 testimony, it would be on that date.

18 JUDGE FELDMAN: Well, that was, I guess, what I
19 was asking. Is that acceptable to everybody, to have you
20 put in testimony on that date as well, given, I think
21 they're trying to come up with a fairly condensed schedule?

22 MR. WATTS: Yes.

23 MS. WELLMAN: They would have the opportunity
24 to file rebuttal. There is the opportunity to file
25 rebuttal, Your Honor, so it would be rebuttal for everyone

1 I guess.

2 JUDGE FELDMAN: But your rebuttal date is when
3 that you're looking at?

4 MS. WELLMAN: I think we would propose June
5 14th.

6 MR. MOODY: No discovery, then?

7 MS. SMITH: I think when you and I spoke,
8 Sherri, we were offering July 22nd as a rebuttal, I mean
9 June.

10 MS. WELLMAN: Yes and I think that that has
11 been -- the company thought that June 16 would be fine and
12 I don't want to speak for Dominion but Dominion would like
13 to cut that down even further.

14 JUDGE FELDMAN: Well --

15 MS. WELLMAN: So I'm throwing out the date that
16 was kind of a compromise.

17 JUDGE FELDMAN: So there is currently no
18 agreement on a date for rebuttal filing?

19 MS. SMITH: Well, not at this point, with the
20 opportunity for Dominion to possibly file testimony as well
21 on the day that interveners and staff would be filing
22 testimony. If they'd like to keep a June 14th date, then I
23 would suggest that possibly if Dominion has any testimony
24 they'd like to provide in support of the application or
25 further explaining the application or whatever they would

1 like to do, that it would be before the interveners and
2 staff file their testimony.

3 JUDGE FELDMAN: I thought that's what you
4 wanted.

5 MR. WATTS: That is entirely reasonable.

6 MS. WELLMAN: What day would you propose, then,
7 to file if you filed, considering today is the 21st of
8 April?

9 MS. SMITH: Probably three weeks before we file
10 our case.

11 MS. WELLMAN: It looks like Dominion would file
12 a direct case on May 18th, then, is that okay with
13 everyone?

14 MS. SMITH: Yes.

15 MR. MOODY: Yes.

16 MS. SMITH: And then staff and interveners
17 would file on June 8th.

18 JUDGE FELDMAN: And the rebuttal date now would
19 be?

20 MS. WELLMAN: I think June 14th. Motions to
21 strike and cross examination on the same day due June 25th.

22 MS. SMITH: I would propose because of the
23 circumstances that arise when a case does develop and
24 rebuttal is provided, that a June 25th date would cut short
25 the ability to get turn around in discovery or an analysis

1 of the rebuttal in order to determine whether a motion to
2 strike would be filed. I suggest it's a little tight. If
3 we could move this out to, I would suggest possibly June
4 30th for the date of filing motions to strike and whatever
5 Your Honor obviously would require. You would have motions
6 to strike filed the same day we would hear them? I don't
7 know if that would necessarily be appropriate, but motions
8 to strike like June 30th would give ample time, I believe,
9 for staff to review the rebuttal, to have an opportunity to
10 produce discovery and result in an opportunity to file
11 motions to strike if any are necessary.

12 JUDGE FELDMAN: Do we have the date in mind for
13 cross?

14 MS. WELLMAN: I was just going to have cross and
15 motions to strike on the same day.

16 JUDGE FELDMAN: Why don't we have motions to
17 strike at least one day before, then people are working
18 with a standard four or five o'clock deadline to get those
19 filed then they can show up the next day and deal with
20 them, rather than having to file them, I guess, first thing
21 in the morning before we go on the record. Would that
22 work?

23 MS. SMITH: I would suggest or offer if the day
24 before that we did a filing by say noon so people have an
25 opportunity to get those in and review them before the next

1 morning.

2 JUDGE FELDMAN: So much the better.

3 MS. SMITH: I would be comfortable with that.

4 MS. WELLMAN: That would be fine. So we would
5 have motions to strike due on the 29th.

6 MS. SMITH: By noon.

7 MS. WELLMAN: And corrections on the 30th.

8 MR. WATTS: If I may be heard briefly, every
9 day is crucial for us and if it would be possible to maybe
10 move that a couple days up.

11 MS. SMITH: Move which a couple days up?

12 MR. WATTS: Both of those dates such that the
13 motions would be due the 27th and cross on the 28th?

14 MS. WELLMAN: The 27th is Sunday. Maybe we
15 could have it due the 25th, motions to strike due on the
16 25th at five o'clock then you have the weekend to look at
17 them if we need to.

18 MR. WATTS: Noon is okay.

19 JUDGE FELDMAN: I hate to volunteer other
20 people for weekends.

21 MS. WELLMAN: How about noon on the 25th for
22 motions to strike and cross on the 28th.

23 JUDGE FELDMAN: I'm not sure we have an
24 agreement on that.

25 (Off-the-record discussion.)

1 JUDGE FELDMAN: Back on the record. We had
2 been discussing scheduling issues off the record. I
3 believe that we had agreed on a May 18th date for Dominion
4 to file any testimony, June 8th filing date for staff and
5 remaining interveners and I think we left off with a June
6 14th rebuttal date. Following that, Ms. Wellman, would you
7 like to recite the rest of the schedule.

8 MS. WELLMAN: Yes, Your Honor. Please correct
9 me if I make any errors. Motions to strike will be due on
10 June 25th. Cross examination will be held starting at nine
11 o'clock on June 29th and continuing through the 30th if
12 necessary. Initial briefs will be due on July 19th and
13 reply briefs will be due on July 28th.

14 It's anticipated that Your Honor will issue a
15 PFD and the parties agreed that there will be a span of 10
16 days for the filing of exceptions and seven days for the
17 filing of replies to exceptions.

18 I just wanted to clarify a few things on the
19 motions to strike. I think the parties had agreed that
20 they would be due by noon of June 25th. The parties have
21 also agreed that between the time of the filing of
22 rebuttal, which is June 14th, and cross examination, there
23 will be a three business day best effort turn around on
24 discovery and with respect to discovery at all other times
25 there will be a five business day, best effort turn around.

1 JUDGE FELDMAN: Thank you. All of those
2 scheduling matters are acceptable and will be set forth in
3 a scheduling memo that will hopefully show up
4 electronically in this case.

5 MS. WELLMAN: Your Honor, we just would like to
6 clarify and would appreciate the parties working with us on
7 this schedule. It is still very important to Wisconsin
8 Public Service Corporation to move this case in an
9 expedited manner, keeping in mind the desire to have
10 Dominion conduct the fall adage, as discussed earlier by
11 Mr. Watts.

12 MR. WATTS: Along those same lines, if I may
13 say briefly, the schedule is somewhat problematic along
14 those lines and, having participated in the discussions and
15 agreeing with these dates, holding in my mind the
16 provisions in the Commission's rules, which encourage
17 settlement and which provide for acceleration of a schedule
18 in the event of a settlement, it's my fervent hope and,
19 dare I say, expectation, that we will be able to produce
20 that result and we certainly will make every effort to
21 produce something like that.

22 JUDGE FELDMAN: I certainly encourage all the
23 parties to try diligently to pursue settlement and avoid
24 any matters you can stipulate to and avoid the need for any
25 evidentiary argument, that would be appreciated by

1 everybody.

2 MS. SMITH: I just wanted the record to
3 reflect, if I may do so, Your Honor, that staff is making
4 every attempt in the schedule given to accomplish what it's
5 been asked to accomplish in this case and I cautiously want
6 to, want an understanding that it was in Wisconsin Public
7 Service Corporation's ability and authority to file when
8 they have he decided to do and I believe staff is
9 definitely aware of the ramifications of trying to keep
10 this thing on a very expedited basis and look forward to
11 the settlement discussions. I know that is foremost on
12 their mind after the preliminary issues are decided but the
13 schedule we have produced is one that will be quite heavy
14 to keep up with but we're at the point where it's necessary
15 to do so now.

16 JUDGE FELDMAN: I appreciate that everybody has
17 had to make some concessions and undertake some burdens to
18 meet this schedule and I certainly am appreciative of your
19 efforts in that regard.

20 Do we need to talk further about protective
21 order issues? I will anticipate getting some kind of
22 interim document from the parties and I will review it and
23 act on it as soon as possible.

24 We have a schedule set which requires that
25 affidavits be filed by all parties April 27th. I have to

1 say that while I understand that the company has obtained,
2 at least by some tacit agreement of parties to the
3 proceeding providing some type of protection in place
4 for these materials, I'm concerned that any order that the
5 Commission issues in this matter would have to be somewhat
6 tailored to specific categories or types of information and
7 that we have some meaningful process in place that takes
8 into account the fact that we have public hearings
9 scheduled in this matter.

10 I wouldn't expect that your interim order would
11 deal with the contested case hearing dates themselves that
12 we have scheduled but I will, of course, review anything
13 that you submit. It looks as if our next hearing date will
14 be May 4th unless I hear otherwise from the parties and I
15 will certainly apprise you all if I learn of the
16 commission's intentions regarding reading the record in
17 this case. Of course, if anything comes up, we can
18 schedule a motion. We have this May 4th hearing date so if
19 there are other matters that we might need to take up at
20 the same time, possibly we could keep that in mind since
21 it's hard to get everybody to have scheduling ability on
22 the same days.

23 Anything else anybody thinks we need to address
24 this morning? Tight timeframes, everybody should have my
25 e-mail address so they can send me copies electronically of

1 documents that they file. It is S-L-F-E-L-D, as in David,
2 M, as in Mary, at Michigan dot gov.

3 Hearing nothing else this matter is adjourned
4 and I thank everybody very much.

5 There is one more detail to take care of. On
6 the record there is one thing that we thought of before
7 everybody left the room and this is that the company has
8 decided that it wants daily transcripts of the hearing days
9 in this matter, both the evidentiary hearing on the
10 protective order issues and the hearings on June 29th and
11 30th on the case in chief; is that correct, Ms. Wellman?

12 MS. WELLMAN: Yes, Your Honor.

13 JUDGE FELDMAN: My scheduling memo in this
14 matter will also reflect that and I thank everybody again.

15 (Hearing ended at approximately 12:04 p.m.)
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF NOTARY PUBLIC

2 (STATE OF MICHIGAN)
3 (SS)
(COUNTY OF INGHAM)

4 Being a Notary Public duly commissioned and qualified
5 in and for the State of Michigan at Large, I do hereby
6 certify the motion argued herein, was recorded
7 stenographically, and was later reduced to transcription
8 under my supervision; said transcription being a true
9 record of the argument given by counsel.

10 I further certify that I am neither attorney or
11 counsel for, nor related to or employed by any of the
12 parties to the action in which this hearing is
13 taken; and, further, that I am not a relative or
14 employee of any attorney or counsel employed by the
15 parties hereto, or financially interested in the action.

16 IN WITNESS WHEREOF, I have hereunto subscribed my
17 signature this April 22, 2004

18 MY COMMISSION EXPIRES:

Lori A. Sutton

19
20 October 12, 2004

Lori A. Sutton, CSR-2261