

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
WISCONSIN ELECTRIC POWER COMPANY,)	
WISCONSIN PUBLIC SERVICE CORPORATION,)	
and UPPER MICHIGAN ENERGY RESOURCES)	
CORPORATION for approval, pursuant to MCL 460.6q,)	Case No. U-18061
for the transfer of control of Wisconsin Electric)	
Power Company's Michigan electric distribution)	
assets and Wisconsin Public Service Corporation's)	
Michigan electric and natural gas distribution assets to)	
Upper Michigan Energy Resources Corporation,)	
<u>and related approvals.</u>)	

PROTECTIVE ORDER

This Protective Order governs the use and disposition of Protected Material (as defined below) disclosed by Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Upper Michigan Energy Resources Corporation, or any other Party (as defined below) in this case, as set forth herein. The intent of this Protective Order is to protect non-public confidential information and materials so designated by the producing Party (including, but limited to, pursuant to MCL 460.6q(10)), which information and materials contain confidential, proprietary, or commercially sensitive information, including confidential information provided in discovery, and any witness's related testimony and exhibits and arguments of counsel referring to such confidential information ("Protected Material"). This Protective Order describes the manner in which Protected Material is to be identified and treated, and governs its ultimate disposition. Accordingly, IT IS HEREBY ORDERED:

1. This Protective Order shall govern the use of all Protected Material, so identified and marked as required by Paragraph 11, that is filed in this case on a confidential basis and/or made available for review, or produced, by or on behalf of any Party to any Party, Reviewing Representative, the Administrative Law Judge (“ALJ”) assigned to this case, or members of the Michigan Public Service Commission (“MPSC”) assigned to assist the MPSC in Case No. U-18061. Protected Material shall be used and disclosed by the recipient thereof solely in accordance with the terms and conditions of this Protective Order.

2. This Protective Order protects: (1) the Protected Material; (2) any copy or reproduction of the Protected Material made by any person; and (3) any memoranda, handwritten notes, or any other form of information that copies, contains or discloses Protected Material.

3. The information subject to this Protective Order does not include:

- a. Information lawfully known by the Party or Reviewing Representative at the time of disclosure that is not subject to a confidentiality agreement or arrangement; and
- b. Information that is or becomes available to the general public through no fault of a Party or Reviewing Representative.

4. “Party” shall mean any party to this proceeding, including the Staff and Attorney General, who produces, requests or receives access to the Protected Material, subject to the requirement that each Reviewing Representative must sign a Nondisclosure Certificate.

5. “Reviewing Representative” shall mean a person who has signed a Nondisclosure Certificate and who is:

- a. an attorney who has entered an appearance in this proceeding for a Party;

- b. an attorney, paralegal, or other employee associated for purposes of this case with an attorney described in Paragraph 5a;
- c. an expert or employee of an expert retained by a Party for purposes of advising, preparing for, or testifying in this proceeding; or
- d. an employee or other representative of a Party with significant responsibility for this docket.

A Reviewing Representative is responsible for assuring that persons under his or her supervision and control comply with this Protective Order.

6. “Nondisclosure Certificate” shall mean a certificate substantially in the form of the certificate attached to this Protective Order by which a Reviewing Representative who has been granted access to Protected Material certifies his or her understanding that such access is provided pursuant to the terms of this Protective Order and that he or she agrees to be bound by it.

7. A Party may authorize access to and use of Protected Material by a Reviewing Representative identified by the Party as being necessary in order to analyze the Protected Material, including consultants employed by the Party, but only for the purposes of analyzing the issues, presenting evidence, and preparing testimony, cross-examination, argument, pleadings, briefs, exceptions or other motions or filings in Case No. U-18061. Such persons may not release or disclose the content of Protected Material to any other person or use such information for any other purpose.

8. All persons authorized to review Protected Material, including copies or reproductions, and copies of notes of Protected Material, must, before reviewing any Protected Material, sign a copy of the Nondisclosure Certificate, which evidences an agreement by such

person to be bound by the terms of this Protective Order. A copy of the executed Nondisclosure Certificate shall be provided to all Parties.

9. Protected Material shall remain the property of the producing Party and shall only remain available to the Party until no later than the conclusion of any appeal of any final order issued in this Case No. U-18061. A Party in Case No. U-18061 who has signed a Nondisclosure Certificate and who is participating in an appeal from a final order in this Case No. U-18061 may retain copies of Protected Material until the date the final order in this Case No. U-18061 is no longer subject to judicial review. On or before the date specified by the preceding sentence, with the exception of the provision made in the second to the last sentence of this paragraph, the Party shall return all Protected Material in its possession or in the possession of its Reviewing Representatives, including all copies thereof and notes of Protected Material or certify in writing that the Protected Material has been destroyed. The Party shall submit to the producing Party written certification stating that all Protected Material and all copies thereof and all notes of Protected Material in its possession, care, custody or control have been returned or destroyed. Notwithstanding, the attorney for a Party may retain copies of non-public pleadings, orders, transcripts, briefs, comment, and exhibits, which contain Protected Material in Case No. U-18061; provided, a list of retained documents, which identifies the documents containing the Protected Materials, is given to the producing Party within 30 days from the date on which the final order in Case No. U-18061 is no longer subject to judicial review. To the extent Protected Material is not returned by a Party or destroyed pursuant to this Protective Order, it shall remain subject to this Protective Order.

10. The Parties to Case No. U-18061 retain the right to seek further restrictions on the dissemination of Protected Material to Parties or to persons who have or may subsequently seek to intervene in this proceeding.

11. Protected Material made available by the producing Party shall be clearly marked as Protected Material subject to this Protective Order, including by labeling such items as "Confidential." Any copies of Protected Material shall be physically designated as Protected Material by the Party or the person authorized by the Party to make the copy. Notes of Protected Material shall be physically marked as Protected Material by the person making the notes. All Protected Material in the possession of the Party shall be maintained in a secure place. Access to Protected Material shall be limited to persons authorized to have such access subject to the provisions of this Protective Order.

12. Even if no longer engaged or active in this proceeding, every person who has signed a Nondisclosure Certificate shall continue to be bound by the provisions of this Protective Order. The obligations under this Protective Order shall not be extinguished or nullified by entry of a final order in this case and shall be enforceable before the MPSC or in a court of competent jurisdiction.

13. If a Party with access to Protected Material desires to incorporate, utilize, refer to, or otherwise use Protected Material in pre-filed testimony, pleadings, direct or cross-examination, briefs, oral argument, comments or in some other form in this proceeding, such Party shall only do so pursuant to procedures that will maintain the confidentiality of the Protected Material. For purposes of this order, the following procedures are established:

- a. Written submissions using Protected Material shall be filed in a sealed record, to be maintained by the Docket Section of the MPSC in envelopes

clearly marked on the outside, "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER ISSUED IN CASE NO. U-18061."

Simultaneously, identical documents and materials, but with the Protected Material redacted, shall be filed, offered, introduced, or otherwise disclosed in the usual manner for the submissions of evidence or briefs.

- b. Furthermore, with regard to proceedings before the MPSC or presiding officers designated by it, oral testimony, examination of witnesses, or argument on the Protected Material shall be conducted on a separate record to be maintained by the Docket Section of the MPSC. These separate record proceedings shall be closed to all persons except those furnishing the Protected Material and Parties otherwise subject to this Protective Order. The Party presenting the information during the course of the proceeding shall advise the presiding officer receiving testimony of the terms of this Protective Order on sufficient notice to allow the presiding officer an opportunity to take measures within the presiding officer's control to protect the confidentiality of the Protected Material, and suggest that a separate, protected record be made of all testimony concerning the protected information.
- c. Copies of documents filed with the MPSC that contain Protected Material, including the portions of the exhibits, transcripts, and brief that refer to Protected Material, must be sealed and maintained in the MPSC's files with a copy of the Protective Order attached.

14. It is intended that the Protected Material subject to this Protective Order should be shielded from disclosure by the Party to the extent permitted by law, *see e.g.* MCL 460.6q(10). If any person files a Freedom of Information Act Request seeking access to documents subject to this Protective Order, the MPSC's Executive Secretary shall immediately notify the producing Party, and the producing Party may take whatever legal actions it deems appropriate to protect the Protected Material from disclosure. In accordance with Section 5 of the Freedom of Information Act, MCL 15.235, the notice must be given at least five days (5) business prior to the MPSC, its Staff, and/or Attorney General responding to the request. This Protective Order does not prohibit disclosure to the extent, but only to the extent, and for the purpose, but only for the purpose, that such disclosure is: (i) required by law; or (ii) in response to a valid order of a court of competent jurisdiction or governmental body; provided that in all instances above, the Party first provides reasonable written advance (at least five (5) business days prior) notice to the producing Party of the proposed disclosure.

15. The provisions of this Protective Order shall not apply to a particular document or portion of a document described in Paragraph 2 if a Party can demonstrate that it has been previously disclosed on a non-confidential basis or meets the criteria set forth in Paragraph 3a or 3b. Before disclosing a particular document or portion of a document described in Paragraph 2, however, the Party must first provide reasonable notice to the producing Party of its conclusion that the document or portion of a document is not subject to this Protective Order because of prior disclosure. The provisions of this Protective Order shall terminate as to the Protected Material described in Paragraph 2 to the extent that the content of such Protected Material are filed with a state, provincial or federal agency and are not subject to protection from public disclosure, or are otherwise lawfully disclosed.

16. If a Party violates this Order by an improper disclosure or use of Protected Material, then that Party shall take all necessary steps to remedy the improper disclosure or use. This includes immediately notifying the MPSC, the presiding officer, and the producing Party, in writing, of the identity of each person known or reasonably suspected to have obtained the Protected Material. Parties that violate this Protective Order remain subject to this paragraph regardless of whether the producing Party could have discovered the violation earlier than it was discovered. This paragraph of this Protective Order applies to both inadvertent and intentional violations. Nothing in this Protective Order limits the producing Party's rights and remedies, at law or in equity, against Parties or persons using Protected Material in a manner not authorized by this Protective Order, including the right to obtain injunctive relief to prevent violations of this Protective Order.

17. Upon motion filed by any Party to Case No. U-18061, the MPSC or any presiding officer designated by it may subsequently declare that the protected status of Protected Material should not be continued and immediately communicate that declaration to the producing Party. Thereafter, this Protective Order shall cease to apply to such Protected Material unless, within twenty-one (21) days, the producing Party files a pleading asserting that the information should continue to be protected and setting forth the basis for that assertion. The producing Party shall bear the burden of proving that the asserted Protected Material is entitled to continuing protection from disclosure. If the MPSC or presiding officer finds that an asserted Protected Material no longer qualifies for treatment as Protected Material, it shall remain subject to the protection afforded by this Protective Order for twenty-one (21) days following the issuance of the MPSC's order or the presiding officer's ruling.

18. The obligations of this Protective Order shall not apply if the Protected Material is approved for release by written authorization of the producing Party, but only to the extent of such authorization.

19. The ALJ and members of the MPSC assigned to assist the MPSC in Case No. U-18061 may review Protected Materials that are a part of confidential pleadings, and Protected Materials that are admitted into the record, for purposes of analyzing the issues, issuing rulings, preparing the proposal for decision, and issuing MPSC orders. Such persons may not release or disclose the Protected Material inconsistent with the terms and conditions of this Protective Order.

Dated: July 8, 2016

Administrative Law Judge Martin D. Snider

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
WISCONSIN ELECTRIC POWER COMPANY,)	
WISCONSIN PUBLIC SERVICE CORPORATION,)	
and UPPER MICHIGAN ENERGY RESOURCES)	
CORPORATION for approval, pursuant to MCL 460.6q,)	Case No. 18061
for the transfer of control of Wisconsin Electric)	
Power Company's Michigan electric distribution)	
assets and Wisconsin Public Service Corporation's)	
Michigan electric and natural gas distribution assets to)	
to Upper Michigan Energy Resources Corporation,)	
<u>and related approvals.</u>)	

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Material is provided to me pursuant to the terms and restrictions of the Protective Order issued in Case No. U-18061, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by the terms of the Protective Order. I am aware that the Joint Applicants and any other producing Party assert that Protected Material, as defined in the Protective Order, includes information that is confidential, proprietary, and commercially sensitive. I understand that the substance of the Protected Material, any notes or other memoranda, or any other form of information that copies or discloses Protected Material, shall be maintained as confidential, shall not be disclosed to anyone other than in accordance with that Protective Order, and shall not be used for any purpose other than in connection with Michigan Public Service Commission Case No. U-18061.

Reviewing Representative

Date: _____

Title:
Representing:

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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STATE OF MICHIGAN)		
)	SS.	Case No. U-18061
County of Ingham)		
_____)		

P R O O F O F S E R V I C E

Danielle R. Rogers being duly sworn, deposes and says that on July 8, 2016, she served a copy of the attached Protective Order via E-Mail, to the persons as shown on the attached service list.

Danielle R. Rogers

Subscribed and sworn to before me
This 8th day of July 2016.

Lisa Felice
Notary Public, Eaton County
My Commission Expires April 15, 2020

ATTACHMENT A

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