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November 13, 2018

Ms. Kavita Kale, Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917

RE: MPSC Docket No. U-20165

Dear Ms. Kale:

Attached herewith for filing in the above-referenced matter, please find ***Solar Energy Industries Association's Brief in Opposition to Michigan Electric Transmission Company's Motion to Strike Rebuttal Testimony of Kevin M. Lucas*** and Certificate of Service of same.

Should you have any questions or concerns with the attached, please do not hesitate to contact me. Thank you.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.

Jennifer Utter Heston

JUH/ab
Attachment
cc: All parties of record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of) CONSUMERS ENERGY COMPANY) for approval of its integrated resource plan) pursuant to MCL 460.6t and for other relief.))	Case No. U-20165

SOLAR ENERGY INDUSTRIES ASSOCIATION'S BRIEF IN OPPOSITION TO MICHIGAN ELECTRIC TRANSMISSION COMPANY'S MOTION TO STRIKE REBUTTAL TESTIMONY OF KEVIN M. LUCAS

Dated: November 13, 2018

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On November 9, 2018, Michigan Electric Transmission Company ("METC") filed a Motion to Strike the Rebuttal Testimony and Exhibits of Solar Energy Industries Association's ("SEIA") witness Kevin M. Lucas. SEIA, by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., hereby files this Brief in Opposition to the Motion to Strike. METC's Motion to Strike is without merit and should be denied.

I. INTRODUCTION

METC claims that portions of Mr. Lucas' rebuttal testimony and all of Mr. Lucas' rebuttal exhibits ought to be stricken arguing that that Mr. Lucas "lacks any knowledge, skill, expertise, training, or education related to transmission or the types of transmission analysis described in Mr. Marshall's testimony, which would be required to be accepted by the Commission as expert testimony."[1] METC further argues that the testimony should be stricken because it is irrelevant, or if relevant, then it will lead to prejudice, confusion, or waste of time.[2]

II. STATEMENT OF LAW

Under MCL 460.6t(7), this case is a contested case subject to the Administrative Procedures Act of 1969, as amended ("APA"). Under Chapter 3 of the APA, administrative agencies have adopted numerous administrative rules.

Rules governing the practice and procedure before the Michigan Public Service Commission are found in Part 4 of the uniform hearing rules, R 792.10401 through R 792.10448. Among other things. Rule 427 states:

> Rule 427. (1) The rules of evidence as applied in nonjury civil cases in circuit court shall be followed as far as practicable, but the commission may admit and give probative effect to evidence of a type commonly relied upon

[1] METC's Motion, pp. 1-2.

[2] METC's Motion, p. 8.

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> by reasonably prudent persons in the conduct of their affairs. Objections to offers of evidence may be made and shall be noted in the record.[3]

MCL 24.275 contains similar provisions.

Several rules contained in the Michigan Rules of Evidence ("MRE") address the competency of witnesses to testify. MRE 601 states that every person is competent to be a witness except as otherwise provided in these rules. MRE 603 states that before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation. MRE 701 states that if a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

While personal knowledge is an important condition that applies to witnesses testifying in judicial proceedings, Rule 427(1) indicates personal knowledge is not required in MPSC proceedings because the Commission may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In other words, there is a wide latitude for admitting evidence in administrative proceedings. *See, Winokur v State Board of Dentistry,* 366 Mich 261, 265; 114 NW2d 233 (1962), and *In re Appeal of General Motors Corp.,* 376 Mich 373, 382; 137 NW2d 161 (1965).

Under Michigan's rules of evidence, all logically relevant evidence is admissible except as otherwise prohibited by the state or federal constitution or other court rules. *People v VanderVliet,* 444 Mich 52, 60-61; 508 NW2d 114 (1993). To be relevant, evidence must be material and probative of a fact of consequence to the action. *People Mills,* 450 Mich 61, 67; 537 NW2d 114 (1993). To be material a fact must be one "in issue" or within the "range of

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[3] Mich. Admin. Code R. 792.10427(1).

litigated matters in controversy." *People v Sabin (After remand),* 463 Mich 43, 57; 614 NW2d 888 (2000). Furthermore, evidence for purpose of addressing disputed questions in this case is relevant and admissible, even if the evidence might be inadmissible for some other purpose. *Wilson v Ex-Cell-O Corp.,* 12 Mich App 637,641; 163 NW2d 492 (1966).

With respect to expert witnesses, MRE 702 through MRE. 706 apply. MRE 702 provides:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

This rule of evidence lists ways a potential witness may be qualified as an expert witness – "knowledge, skill, experience, training, *or* education" (emphasis added). The use of "or," not "and" means that the requirements are alternative, not cumulative. Technically a person may qualify as an expert if any one of these criteria apply. The rule does not state that a witness must qualify as an expert in all the criteria, assuming the rule's other conditions are met. MRE 704 provides that testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. MRE 706(d) indicates parties may call expert witnesses of their own selection even in judicial proceedings.

Michigan case law also addresses the admission of testimony, including opinion testimony, by qualified experts. For example, *People v Gambrell*, 429 Mich. 401, 415 N.W.2d 202, 205 (1987), addressed a challenge to the qualifications of a chemical engineer, who was also an attorney, to give expert testimony on behalf of the defendant in a felony murder trial

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involving possible arson. The assistant prosecutor argued that the witness was not qualified to testify as to whether the fire had been intentionally set, noting, "He may be a qualified lawyer, but not qualified to state any opinions on the origins of fires."[4] The trial court excluded the witness's testimony, and the defendant appealed. The Court of Appeals affirmed the ruling of the trial court, but the Supreme Court of Michigan reversed, and took the opportunity to review the law regarding the qualification of experts. Citing *People v. Smith*, 425 Mich. 98, 105- 106; 387 N.W.2d 814 (1986) and *People v. Hawthorne*, 293 Mich. 15, 23, 291 N.W. 205 (1940), the court stated:

> [W]e said that "the witness must have sufficient qualifications 'as to make it appear that his opinion or inference will probably aid the trier in the search for truth.' McCormick, Evidence (3d ed), Sec. 13, p 33." We also quoted MRE 702, which provides that expert testimony can be provided by "a witness qualified as an expert by knowledge, skill, experience, training, or education"… The proposed expert is a chemical engineer who testified that he had lectured in both the public sector and the private sector on combustion, and had worked with the Detroit Fire Department in cases involving gasoline explosions or potential explosions. He had worked with arson investigators and had "dealt with the low point of burns, with flashpoints, of materials both open and closed, coupled with the different ignition temperatures of different materials, the melting points of metals, the evidence left after fires, the tracks left by the formation of combustion products, the phenomenon of paralysis." The witness is clearly qualified to testify as an expert on the defendant's behalf. *As in Hawthorne, a finding of expertise is not foreclosed by the fact that the witness has developed his expertise in a career that has followed a path different than the careers of the prosecution's arson experts. Gaps or weaknesses in the witness' expertise are a fit subject for cross-examination, and go to the weight of his testimony, not its admissibility.*[5] (Emphasis added.)

[4] 429 Mich 401, 405 (1987).

[5] 429 Mich. 405-408. For cases in which contested "expert" testimony is ruled admissible on the principle that a gap or weakness in a witness's expertise is a matter for cross-examination and goes to the weight of the testimony, not its admissibility, see for example *People v. Rembish*, 010815 MICA, 308738, unpublished *per curiam* opinion of the Court of Appeals of Michigan, 01/08/2015 (in which a defendant in a murder case unsuccessfully challenged the qualifications of a Saginaw Police Detective as an expert witness in the area of cellular phone records and data, when the data with regard to cell phone location was arguably was outside the knowledge base of the average lay person and the officer's training largely consisted of attending a seminar where he was taught to analyze this data). See also *Albro v. Drayer*, 303 Mich App. 758, 846 N.W.2d 70, a medical malpractice case in which the jury found in favor of the defendant physician who performed ankle surgery on the plaintiff, and the plaintiff appealed on the grounds that the testimony of the defendant's witnesses should not have been admitted because they lacked

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Not surprisingly, it is not unusual for the expert credentials of witnesses to be challenged in cases involving alleged medical malpractice. One such case is *Siirila v. Barrios*, 398 Mich 576, 591; 248 NW2d 171 (1976) (*Siirila*), cited in METC's Motion at page 3. This case involved a suit for malpractice against a general practitioner who had attended at the birth of a premature baby. In *Siirila*, the Supreme Court of Michigan held that the trial court had erred by excluding testimony of the plaintiff's witness, a pediatrician. Specifically, the court addressed the question whether the trial court erred in excluding testimony on the issue of the "standard of care of the community," since as a pediatrician the witness was a specialist, not a general practitioner. The court held that the testimony should have been admitted.[6] The Supreme Court quoted an often-cited rule that

> [o]rdinarily, the qualification of competency of expert witnesses is a matter for the discretion of the trial judge, *Ives v. Leonard*, 50 Mich. 296, 299, 15 N.W. 463 (1883) 'and it is incumbent on the person offering an expert witness to show that the witness possesses the necessary learning, knowledge, skill or practical experience to enable him competently to give such testimony'. Michigan Law & Practice Evidence, § 260, p. 484. See *Moore v. Lederle Laboratories*, 392 Mich. 289, 295--296, 220 N.W.2d 400 (1974).[7]

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familiarity with the specific surgical procedure performed. In affirming the judgment of the trial court, the Court of Appeals stated:

> We can find no rule, statute, or binding authority requiring identical experience and expertise between a party and an expert, and we decline plaintiff's implicit [303 Mich.App. 764] invitation to create such a rule. Such a rule would eviscerate the ability of almost any party to find an expert in almost any field, and it would not further assist triers of fact. (846 N.W.2d 73).

[6] 398 Mich. 591. The court also ruled that the failure to admit the testimony had been "harmless error" and therefore not grounds for reversal.

[7] *Ibid*. The court in *Siirila* specifically focused on the issue whether a pediatrician/ specialist may offer testimony on the of standard of SEIA for a general practitioner:

> Pediatricians and general practitioners are both medical doctors and therefore there is even less reason to preclude testimony of one on the standard of SEIA of the other than there would be if members of different schools were involved. The rule therefore as to the ability of a specialist testifying as to a general practitioner's compliance with the requisite standard of SEIA of a general practitioner is only that the witness have knowledge of the standard of SEIA about which he or she is testifying. The standard of SEIA discussed must of course be that of a general practitioner. See *Czajka v. Sadowski*, 243 Mich. 21, 22, 219 N.W. 660 (1928) (testimony of a specialist was deemed improper because it was based on the standards of a skilled specialist). The weight to be given such testimony is, of course, a matter for the jury. *Harvey v. Silber*, 300 Mich. 510, 517, 2 N.W.2d 483 (1942).
>
> We are referred to no cases which have charged this rule (398 Mich. 593.)

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Thus, the *Siirila* case does not support METC's claim that Mr. Lucas is not qualified as an expert to rebut Mr. Marshall's testimony.

III. ARGUMENT

It is SEIA's position that Mr. Lucas satisfies the competency standards adopted in the statutes, the administrative rules, and case law precedent cited above. Indeed, for the purposes of this case it is important also to recall that more relaxed evidentiary standards apply in cases before this Commission than those applicable in judicial proceedings. When considering challenges to the credentials of expert witnesses, rather than setting up "hurdles" to keep testimony out,[8] the Commission has generally explained that, to allow "individuals and interested groups [to] make a meaningful contribution to commission decisions, the law relaxes somewhat the rules of evidence which would apply in a formal judicial proceeding."[9]

Thus, the court held in *Siirila v. Barrios* that the expert testimony should have been admitted:

> We reiterate today that a specialist may testify as to the standard of care of a general practitioner as long as the witness is knowledgeable about the general practitioner's standard of care. (398 Mich. 597).

Dybata v Kistler, 140 Mich App 65, 70; 362 NW2d 891 (1985), on which METC relies, also involved medical malpractice and the issue whether a specialist can properly testify as to the standard of care applicable to a general practitioner. In that case the Court of Appeals recited the general rule that "whether a witness is sufficiently qualified to provide opinion testimony is a decision within the sound discretion of the trial court, and that court's decision will not be disturbed absent an abuse of discretion, *Gilmore v. O'Sullivan*, 106 Mich App. 35, 39, 307 N.W.2d 695 (1981) (140 Mich App. 68, 69). There, applying the same rule as that evoked by *Siirila* ["The proper test for determining if an expert witness is qualified to testify in a medical malpractice trial is whether the witness is familiar with the appropriate standard of care"], the Court of Appeals did not find abuse of discretion in excluding the evidence when, among other things, the witness "admitted when he looks at the cases, he looks through the eyes of a trained obstetrician and gynecologist," and "his statement does not establish that he has any direct knowledge regarding proceedings of a general practitioner" (140 Mich App. 69). Obviously, the specific holding in *Dybata v Kistler* excluding the specialist's testimony against a general practitioner in a malpractice suit does not constitute precedent for excluding Mr. Lucas's testimony in the instant integrated resource plan ("IRP") proceeding.

[8] METC's Motion, p. 3 states, "an initial hurdle to admitting any expert testimony, the proponent of the expert testimony must show the expert is qualified to offer the opinion(s) that are part of the testimony."

[9] *In re Consumers Power Co*, Opinion and Order, MPSC Case No. U-5331, 1978 WL 456976 (July 31, 1978), p. 7-8. This often-cited case involved an application by Consumers Power Co (Consumers) to increase its electric rates. Consumers filed a motion to strike portions of the testimony of a witness for Public Interest Research Group in Michigan (PIRGIM). The witness, who had experience as an energy policy analyst and had testified as a witness in various proceedings before the Commission, testified among other things that Consumers' future costs for its Midland nuclear power plant should be excluded from rate base, and offered analysis of Consumers' demand forecasts and cost projections. The ALJ not only granted the motion, he also – on his own motion – struck the

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A. Mr. Lucas is qualified to offer his rebuttal testimony and exhibits.

Mr. Lucas possesses extensive experience, knowledge, and skill in matters related to the issues in dispute in this case, including the quantitative analysis addressed in METC witness Mr. Marshall's direct testimony, and he is fully qualified to serve as an expert witness in this case.[10] Mr. Lucas has more than eight years of increasing responsibility in the energy industry and currently occupies the role of Director Rate Design for SEIA. SEIA is a national trade association for the solar industry. In his role at SEIA, Mr. Lucas has provided expert witness testimony on renewable energy, generation resource retirements, energy efficiency, demand response, energy and capacity markets, cost recovery, rate design, and certificates of necessity. Mr. Lucas holds degrees in engineering from Princeton University and business administration from the University of North Carolina. Mr. Lucas worked for the Maryland Energy Administration addressing energy policy and legislative issues and the Alliance to Save Energy. Mr. Lucas has the knowledge, skill, experience, training, or education to review, analyze and address a wide variety of energy and utility related issues.

When considering whether Mr. Lucas is qualified to offer his rebuttal testimony and exhibits, it is important to consider the nature of the testimony he is specifically offering.

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remainder of that witness's testimony, finding that it was inseparable from the testimony that was the subject of the motion and that, in addition, it was full of "speculation and conjecture," among other problems. The ALJ also found that to present his testimony the witness "would have had to have expertise as an electrical engineer, civil engineer, economics, accounting, physics, chemistry and even medicine." However, the Commission found that the testimony should have been admitted, and this is the context in which the often cited language on the Commission's relaxed standard, quoted above, appears. Citing the statute then in force, Section 85 of the Administrative Procedures Act, 1969 PS 306 (APA), MCLA 24.285 and Const. 1963, Art. 6, sec.28; APA 106(1)(d), MCLA 24.306(1)(d), the Commission found:

> This residuum rule establishes a minimum standard for decision, but it does not provide a standard for admissibility. On many issues in a rate case, there is a whole range of alternatives supported by "competent, material, and substantial evidence." So that the Commission will be well-informed in the exercise of its discretion within this range, and so that individuals and interested groups may make a meaningful contribution to Commission decisions, the law relaxes somewhat the rules of evidence which would apply in a formal judicial proceeding.

Ibid, p. 7-8.

[10] Mr. Lucas' resume is attached as Appendix A to his Direct Testimony filed in this proceeding.

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Importantly, Mr. Lucas does not seek to insert his own transmission analysis in this case. Instead, Mr. Lucas is relying upon his quantitative analysis education, skills and experience, as well as his knowledge of MISO and the operating characteristics of various generation resources to respond to METC's witness Mr. Marshall.

METC argues that Mr. Lucas is not qualified to offer this rebuttal testimony and exhibits on "transmission issues or analysis."[11] METC complains that Mr. Lucas is offering his critique of Mr. Marshall's "transmission analysis."[12] A careful examination of Mr. Lucas' rebuttal testimony, however, shows that Mr. Lucas never takes issue with the specific transmission analysis conducted by Mr. Marshall, nor does Mr. Lucas offer his own transmission analysis. Instead, Mr. Lucas rebuts Mr. Marshall's testimony on two issues: 1) the implications of the capacity import limit ("CIL") analysis for MISO Zone 7 and 2) the loss of load expectation ("LOLE") analysis.

In rebutting the implications of Mr. Marshall's CIL analysis, Mr. Lucas uses his knowledge of solar development and MISO's requirement to comply with federal reliability standards to show that Mr. Marshall's CIL concerns are over-blown. Mr. Lucas testifies about projects in the MISO MTEP process not included in Mr. Marshall's analysis that would impact any future CIL during the IRP period.[13] Mr. Lucas does not need to be a transmission engineer to be able to speak to MISO's MTEP process and what resources are included for MISO Zone 7, nor does he need any specific transmission expertise to be able to read METC's response to discovery presented as Exhibit SEIA-23 (KML-23) wherein Mr. Marshall states that including the MTEP project slated to address the Fermi II generation issues would increase the CIL to

[11] METC Motion, p. 4.

[12] *Id.*

[13] Mr. Lucas' Rebuttal Testimony, p. 17-19.

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3,497 MW up from Mr. Marshall's identified 1,321 MW CIL resulting from Consumers' PCA.[14] Mr. Lucas' observation that 3,497 MW is nearly back to current CIL levels is a quantitative assessment – 3,497 MW is very close to the 2018/2019 CIL of 3,785 MW. A person does not need specialize transmission expertise to testify that 3,497 MW is close to 3,785 MW.

Similarly, Mr. Lucas testifies about the definition of a "baseline reliability project" and quotes from MISO's MTEP documentation.[15] A witness does not need to be a transmission engineer or have other specialize transmission expertise to be able to quote a MISO definition. Clearly, METC's sweeping motion seeking to strike every word over approximately 24 pages of Mr. Lucas' rebuttal testimony is dramatically over-broad.

Mr. Lucas then testifies that MISO cannot violate federal reliability requirements.[16] A witness does not need specialized transmission expertise to testify that MISO cannot violate the law and must work to find reliability violation solutions. Mr. Lucas' knowledge of energy markets and regional transmission organizations are sufficient to support this testimony.

In its Motion, METC then inappropriately minimizes the implications of Mr. Marshall's testimony. "Mr. Marshall's analysis is not attacking the proposed course of action ('PCA') in the case or even the use of solar resources in the future . . . METC is merely pointing out that resource adequacy and the CIL must be considered in the context of the IRP."[17] METC's assertions are not well-taken. If that were the extent of Mr. Marshall's testimony, then SEIA would not have sought to rebut it. Resource adequacy must be considered in an IRP.

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[14] *Id.*, p. 19.

[15] *Id.*, p. 18, ln 16-20.

[16] *Id.*, p. 19.

[17] METC's Motion, p. 4.

Mr. Marshall, however, presents lengthy testimony purporting to show that Consumers' solar-focused PCA will fail to meet resource adequacy requirements.[18] The use of solar resources to comply with resource adequacy capacity needs is well within the scope of Mr. Lucas' knowledge, skill, experience, training, or education, and Mr. Lucas offers rebuttal testimony appropriately within the scope of his expertise to refute Mr. Marshall's anti-solar CIL claims.

Mr. Marshall's LOLE analysis is at its core about probability, statistics, and arithmetic. It analyzes the entirety of Zone 7 load and generation in idealized, hourly point values and simply compares one to the other, not contemplating power flows over the physical transmission system.[19] In rebutting this testimony, Mr. Lucas uses his quantitative analysis education and skills to show that the assumptions and methodological choices in Mr. Marshall's analysis show that his choices over-state the reliability and resource adequacy issues associated with Consumers' PCA. Mr. Lucas begins by summarizing Mr. Marshall's LOLE testimony.[20] A summary of Mr. Marshall's testimony does not require specialized transmission expertise. Mr. Lucas' education and reading comprehension skills are sufficient to permit Mr. Lucas to craft a summary.

Mr. Lucas then summarizes the MISO MTEP18 Accelerated Fleet Change scenario.[21] Mr. Lucas cites from MISO's MTEP documentation. Again, Mr. Lucas does not need

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[18] "My analyses show that Consumers Energy IRP's PCA will adversely impact Michigan's Capacity Import Capability, resulting in additional capacity needs for Michigan to meets its Resource Adequacy requirements. Indeed, under my analysis, the proposed resource mix for 2032 in Consumers Energy's IRP would be insufficient to meet MISO's resource adequacy requirements." Mr. Marshall's Second Revised Direct Testimony, p. 2, ln. 25-30. "Effectively, the reliability of the system will be compromised, and power quality and resiliency will be challenged." *Id*, p. 7, ln. 14-16. "As proposed, Consumers Energy's PCA is resource deficient." *Id*, p. 7, ln. 14-16.

[19] "At the end of each hour, the model aggregates total available supply, considering modeled uncertainty, and records a loss of load hour if total available supply is insufficient to meet the load for that hour." Mr. Marshall's Second Revised Direct Testimony, p. 12, ln. 4-6.

[20] Mr. Lucas' Direct Testimony, p. 20-21.

[21] *Id.*, p. 21-22.

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specialized transmission expertise to be able to accurately summarize MISO documentation.

Mr. Lucas then critiques Mr. Marshall's inability to produce the underlying data supporting his LOLE analysis and provides METC's responses to discovery to support his critique.[22] It does not take specialized transmission expertise to understand that an inability to produce supporting documentation impedes another parties' ability to review and analyze the analysis performed. Mr. Lucas relies upon his education and quantitative analysis skills to know that supporting documentation is warranted to verify Mr. Marshall's analysis.

Mr. Lucas then testifies regarding his concerns with Mr. Marshall's methodological choices. To begin, he summarizes Mr. Marshall's analysis.[23] Again, it does not take specialized transmission expertise to provide a summary.

Next, Mr. Lucas raises concerns about the wind and solar generation assumptions used in Mr. Marshall's analysis.[24] Mr. Lucas testifies as to operating characteristics of renewable resources, load profiles, capacity factor, etc. Mr. Lucas has extensive experience in renewable energy and is imminently qualified to address the performance and operating characteristics of wind and solar.

Mr. Lucas then addresses the operating characteristics included in Mr. Marshall's LOLE analysis of other resources, such as Ludington pumped storage, demand response, and CVR.[25] Mr. Lucas relies on his knowledge about the operating characteristics of generation resources and planning resources, such as DR, and CVR. Mr. Lucas does not need specialized transmission expertise to raise concerns about how these generation resources were reflected in

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[22] *Id.*, p. 22-23.

[23] *Id.*, p. 24.

[24] *Id.*, pp. 24-32.

[25] *Id.*, pp. 32-36.

Mr. Marshall's LOLE analysis. Again, a LOLE analysis is fundamentally a quantitative analysis that does not require specialized transmission expertise to understand or critique.

Mr. Lucas then performs a quantitative analysis to critique Mr. Marshall's LOLE testimony and make his recommendations.[26] Mr. Lucas explains how Mr. Marshall's assumptions result in significantly less generation resources being available to meet reliability requirements. Mr. Lucas' analysis is rooted in mathematical calculations, not specialized transmission expertise.

The absurdity of the METC's challenge to Mr. Lucas' credentials to provide his rebuttal testimony and exhibits is made clear by even a cursory examination of Mr. Lucas' experience. Mr. Lucas has worked in the energy and environment industry for more than eight years. Mr. Lucas has served as an expert witness in numerous state utility Commission cases covering a wide variety of matters, including renewable energy, energy efficiency, quantitative analysis, risk analysis, energy markets, coal plant retirements, resource adequacy, cost of service, and rate design.[27]

Mr. Lucas is the Director of Rate Design for SEIA. In his role, Mr. Lucas advocates for the use of solar by expanding markets and removing market barriers. Mr. Lucas' work focuses heavily on quantitative analysis, which is what Mr. Lucas employs to rebut Mr. Marshall. Mr. Lucas' quantitative analysis expertise is rooted both his educational background and professional experience. Mr. Lucas hold a Bachelor of Science degree in Mechanical Engineering and a Masters of Business Administration degree. Mr. Lucas clearly possesses sufficient professional experience to qualify him as an expert witness in proceedings involving

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[26] *Id.*, p. 36-40

[27] Mr. Lucas' resume is attached as Appendix A to his Direct Testimony filed in this proceeding.

an expanded use of solar energy in capacity and energy markets administered by MISO, and to utilize quantitative analysis to rebut resource adequacy concerns raised by METC witness Mr. Marshall.

B. Mr. Lucas' testimony is relevant and will not lead to prejudice, confusion, or waste of time.

METC then asserts that Mr. Lucas' testimony should be stricken because it is not relevant and will lead to prejudice, confusion or a waste of time.[28] Oddly, after spending most of its motion arguing that Mr. Lucas' rebuttal testimony should be stricken because Mr. Lucas is not qualified to offer his testimony because he lacks transmission expertise, METC then argues that Mr. Lucas' rebuttal testimony has "nothing to do with transmission".[29] If Mr. Lucas' rebuttal testimony has nothing to do with transmission, then clearly Mr. Lucas does not need transmission expertise to offer it.

Despite efforts to minimize the scope of Mr. Marshall's testimony, the fact is that Mr. Marshall testifies that his analyses show that Consumers' solar-focused PCA will not meet reliability criteria. The assumptions and analysis used by Mr. Marshall to support his conclusions have been placed in issue in this proceeding. Parties are entitled to rebut them. Mr. Lucas' rebuttal testimony is relevant because it makes facts of consequence to Mr. Marshall's testimony more or less probable. Mr. Lucas' testimony is relevant under MRE 401, and will not lead to prejudice, confusion or a waste of time. The Commission is perfectly capable of evaluating Mr. Lucas' testimony and will not be confused.

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[28] METC's Motion, p. 8.

[29] *Id.*

C. Mr. Lucas' testimony and exhibits should not be stricken.

Even if the ALJ has concerns about Mr. Lucas' qualifications to offer the rebuttal testimony and exhibits, they should not be stricken. The Commission is particularly well-suited to evaluate the credentials of various experts appearing before it. Mr. Lucas' qualifications go to the weight that the testimony should be given and not its admissibility. As such, the ALJ should not grant the motion to strike.

Applying the applicable standards, the Commission has repeatedly stated that concerns about the qualifications of expert witnesses "more properly go to the weight to be given . . . expert testimony, not its admissibility."[30] In U-8789 the Commission addressed Detroit Edison Company's ("Detroit Edison") application to appeal from a ruling of the Administrative Law Judge ("ALJ") striking portions of Detroit Edison's witness's testimony on the grounds the witness lacked the requisite expertise. Specifically, the testimony addressed changes to Detroit Edison's Standard Contract Rider No. 3 on standby service. The moving party, Energy Michigan, contended among other things that the rate design characteristics of standby customers are unique, and that the witness was not qualified as an expert in standby rates. The ALJ, while acknowledging that the witness was "an expert in rate design generally," ruled that the testimony should be stricken, finding among other things that "a separate expertise would be needed in this area."[31] On appeal to the Commission, Detroit Edison argued among other things that "if witnesses generally recognized as experts are subjected to an overly narrow test of their qualifications and artificial sub-specialties are created, many previously qualified

[30] *In re Detroit Edison Co*, Order Granting Application for Leave to Appeal, MPSC Case No. U-8789, 1988 WL 412400 (March 15, 1988); see also *Re Consumers Power Co*, supra note 2 (reversing ALJ's decision to strike expert testimony of a "minimally qualified" witness and noting the ALJ's concerns were related to weight of testimony rather than admissibility).

[31] In r*e Detroit Edison Co*, Order Granting Application for Leave to Appeal, MPSC Case No. U-8789, 1988 WL 412400 (March 15, 1988), page 6.

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witnesses, including members of the Staff, will be arbitrarily disqualified from testifying."[32] Energy Michigan's response in support of the ALJ's ruling contended in part that the witness "has shown no educational background in this area."[33] However, the Commission found that the ALJ's ruling should be reversed. Citing *Siirila*,[34] the Commission found that the Detroit Edison witness, whose experience included among other things more than six years' experience in the company's Rate Department, should not be disqualified even if he lacked specific experience in a sub-area such as standby rates and standby service. Any lack of such experience would go to the "weight to be given to his expert testimony," but would not render it inadmissible.[35] Thus, even if Mr. Lucas' qualifications in the instant case were somehow less impressive than those of the DTE witness in Case No. U-8789 – which SEIA does not concede – the Commission would handle that difference by giving reduced weight to Mr. Lucas' testimony, not by striking it.

Similarly, the Commission has long recognized that "some experts are more expert than others, and most expert witnesses have varying degrees of expertise in the wide range of subjects concerning which they may be examined in utility hearings."[36] The Commission has noted that it is well capable of deciding how much weight to assign to the testimony of the various witnesses offering testimony in the cases before it, i.e., the Commission has recognized that the Commission—perhaps unlike juries—is capable of properly weighing testimony presented to it. In ascertaining the qualifications of a witness offering expert testimony and the

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[32] *Id*., page 8.

[33] *Id.*

[34] As discussed above, in *Siirila* the Michigan Supreme Court listed factors to be considered in determining whether a witness should be qualified as an expert as including his or her "learning, knowledge, skill and practical experience that enable the witness to competently give expert testimony." *Id*., page 9.

[35] *Ibid*, pages 9-10.

[36] *In re Wolverine Elec Coop*, Opinion and Order, MPSC Case No. U-5407, 1977 WL 426643 (August 5, 1977).

weight of the evidence to be assigned to testimony, the Commission does not employ one rigid test, but instead may look at a variety of factors. For example, the Commission may consider the expert's formal education, or subsequent work experience, or both.[37] There is not one litmus test.[38] When considering challenges to the credentials of expert witnesses, instead of erecting barriers the Commission generally looks to allow individuals and interested groups to make a meaningful contribution to Commission decisions.[39]

In sum, even if METC's characterization of Mr. Lucas' qualifications (set out on pages 5-6 of its Motion) were accurate – which it is not – any concerns about his qualifications would more properly go to the weight to be given his expert testimony, not its admissibility.

IV. CONCLUSION

In sum, Mr. Lucas' formal training in addition to the on-the-job experience in quantitative analysis, risk analysis, energy markets, and resource adequacy makes Mr. Lucas qualified to present the rebuttal testimony and exhibits that are the subject of METC's motion to strike. It is ludicrous to argue that Mr. Lucas' qualifications do not meet any of the criteria of MRE 702 – "knowledge, skill, experience, training, or education." SEIA respectfully

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[37] *In re Consumers Power Co*, Order Granting in Part and Denying in Part Emergency Appeals, MPSC Case No. U- 5979, 1979 WL 449252 (December 20, 1979). This case cites *People v Charles Wilson*, 27 Mich App 171, 177; 183 NW2d 368 (1970), in which the defendant questioned the qualifications of a police expert who identified a suspicious white powder as containing 25.75 grains of cocaine. The defendant challenged this testimony on the grounds that the witness had no degree in chemistry nor any special education in the analysis of narcotic drugs and was therefore not an expert. The appellate court affirmed the trial court's ruling allowing the testimony, noting that the witness was nearing a degree with a minor in chemistry at the University of Detroit; he was trained by a civilian chemist in the course of his employment; and had analyzed hundreds of substances for the Detroit police department. "One does not have to have formal education to be an expert, but may have acquired special knowledge concerning a subject by reason of his employment. *Alexander v. Mud Lake Lumber Co*. (1908), 153 Mich. 70, 116 N.W. 539; *Colwell v. Alpena Power Co*. (1916), 190 Mich. 255, 157 N.W. 21."

[38] See *People v Beckey*, 434 Mich 691; 456 NW2d 391 (1990); *Mulholland v DEC Int'l Corp*, 432 Mich 395, 401-411; 443 N.W.2d 340 (1989).

[39] In r*e Consumers Power Co*, Opinion and Order, MPSC Case No. U-5331, 1978 WL 456976 (July 31, 1978), cited above.

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submits that Mr. Lucas has experience that qualifies him to present the information found in his rebuttal testimony. Even if he lacked some of the types of experience identified in MRE 702, the rule by its terms requires that he possess only one such factor, and METC's claim that Mr. Lucas has no relevant knowledge, skill, experience, training or education to be able to respond to Mr. Marshall is self-serving and an unpersuasive characterization of Mr. Lucas' qualifications.

Mr. Lucas' credentials as an expert witness covering the disputed subjects addressed in his rebuttal testimony and exhibits are sufficient even if the Commission were tightly bound by the Michigan rules of evidence as they apply to civil cases in circuit court. Under the more relaxed standard, codified in the Michigan APA and in the Commission's Rules of Practice and Procedure, Mich Admin Code R 792.10427, there should be no doubt whatsoever that Mr. Lucas' rebuttal testimony and exhibits are admissible. The Commission "may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs."[40]

The Commission follows the general rule that concerns about the qualifications of expert witnesses "more properly go to the weight to be given . . . expert testimony, not its admissibility."[41] The Commission takes a practical attitude that allows individuals and interested groups to make a meaningful contribution to Commission decisions.[42] It would be unjust and unreasonable, and run against longstanding Commission practice, to foreclose SEIA's full participation in this IRP proceeding by excluding the testimony of a competent,

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[40] Mich Admin Code R 792.10427.

[41] *In re Detroit Edison Co*, Order Granting Application for Leave to Appeal, MPSC Case No. U-8789, 1988 WL 412400 (March 15, 1988)

[42] *In re Consumers Power Co*, Opinion and Order, MPSC Case No. U-5331, 1978 WL 456976 (July 31, 1978).

experienced expert witness whose credentials meet the applicable standards set out in Michigan law.

WHEREFORE, for the reasons explained above, SEIA respectfully requests that the ALJ deny METC's Motion to Strike in its entirety.

Respectfully submitted,

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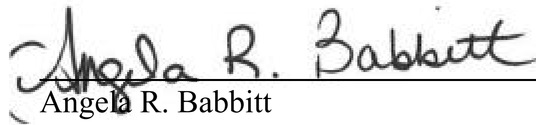
STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
CONSUMERS ENERGY COMPANY	)	Case No. U-20165
for approval of its integrated resource plan	)	
pursuant to MCL 460.6t and for other relief.	)	
	)	

CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 13th day of November, 2018, she served ***Solar Energy Industries Association's Brief in Opposition to Michigan Electric Transmission Company's Motion to Strike Rebuttal Testimony of Kevin M. Lucas*** and this Certificate of Service on the persons identified on the attached service list via electronic mail.



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