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March 21, 2022

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

RE: MPSC Docket No. U-21090

Dear Ms. Felice:

Enclosed herewith for filing in the above-referenced matter, please find the *Exceptions of Hemlock Semiconductor Operations LLC* and a *Proof of Service*.

If you have any questions, please contact do not hesitate to contact my office. Thank you.

Very truly yours,

**Fraser Trebilcock Davis & Dunlap, P.C.**



Jennifer Utter Heston

JUH/alj  
Enclosures  
cc: All counsel 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-21090

EXCEPTIONS OF  
HEMLOCK SEMICONDUCTOR OPERATIONS LLC

Dated: March 21, 2022

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NOW COMES Hemlock Semiconductor Operations LLC (“HSC”), by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and pursuant to the schedule established by Administrative Law Judge Sally L. Wallace (“ALJ”), hereby respectfully submits these Exceptions to the ALJ's Proposal for Decision (“PFD”) issued on March 7, 2022 on Consumers Energy Company's (“Consumers”) application for approval of its Integrated Resource Plan (“IRP”) pursuant to Section 6t of 2016 PA 341, MCL 460.6t.

## I. INTRODUCTION.

HSC is a manufacturer of semiconductor and solar grade polycrystalline silicon and related chemicals headquartered in Hemlock, Michigan.<sup>1</sup> HSC is a very large consumer of electric energy and is Consumers’ largest single site customer.<sup>2</sup> HSC is presently receiving bundled retail electric service from Consumers under a Long-Term Industrial Load Retention Rate (“LTILRR”) and associated LTILRR contract between Consumers and HSC approved in MPSC Case No. U-20697.<sup>3</sup> At present, HSC is the only customer taking service under Rate LTILRR. HSC is also a member of the Ultra-Low Carbon Alliance which is a group of companies committed to expanded market awareness and deployment of ultra-low carbon photovoltaics.<sup>4</sup>

On June 30, 2021, Consumers filed an application, testimony and exhibits seeking approval for its IRP. In its application, Consumers seeks approval for many significant proposals, including its “Proposed Course of Action” (“PCA”) that involves substantial

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<sup>1</sup> 7 Tr. 2208.

<sup>2</sup> 7 Tr. 2209.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

accelerated generation retirements and investment in new generation resources, full cost recovery for its PCA, and approval of unrecovered booked costs of Karn Units 3 and 4 and Campbell Units 1, 2 and 3 (the "Retirement Assets"), including decommissioning costs and proposed regulatory accounting treatment. Consumers also seeks approval of changes to its competitive procurement process used to acquire new generation resources, including more flexibility in the amount of capacity acquired in each solicitation and greater certainty in the Commission approval process for selected resources. As a result, HSC is keenly interested in the rates, terms, and conditions of service approved by the Commission in this case.

In her PFD, the ALJ made numerous determinations and recommendations. For the reasons discussed below, however, the ALJ erred in failing to recommend that the Commission 1) direct Consumers to include in all future solar RFPs consideration of the value of the lifecycle carbon emissions in the manufacturing of the solar equipment, labor conditions, and the reliability and resiliency of the supply chain to deliver essential parts, as part of the bid selection criteria; and 2) reject recommendations that the Commission direct Consumers to file a separate application to address the cost recovery for the remaining book value of the Retirement Assets, including a securitization proposal. The ALJ also erred in failing to recommend that the Commission make clear that any resulting securitization surcharge will not apply to HSC while taking service under the LTILRR contract given her recommendation that the Commission direct Consumers to file a separate application to address retirement cost recovery for the Retirement Assets that include a securitization option.

II. **THE ALJ ERRED IN FAILING TO RECOMMEND THAT THE COMMISSION DIRECT CONSUMERS TO EXPAND THE USE OF BID QUALIFICATIONS AND VALUE-ADDED CRITERIA IN ITS COMPETITIVE SOLICITATION PROCESS TO PROCURE ELECTRICITY COST-EFFECTIVELY AND**

## CONSISTENT WITH SOCIAL AND POLICY GOALS.

Consumers intends to acquire new supply-side energy resources through an annual competitive solicitation process. Consumers' witness Keith G. Troyer provides an overview of the Company's IRP-based competitive solicitations.<sup>5</sup> As part of this proceeding, Consumers proposes several recommended adjustments to the competitive procurement process approved in Consumers' last IRP proceeding, MPSC Case No. U-21065.

HSC is concerned with Consumers' proposed competitive solicitation process. HSC's witness Mr. Rausch testifies, "Consumers Energy should expand the use of bid qualifications and value-added criteria in its competitive solicitation process to procure new electric generation cost-effectively and consistent with social and policy goals."<sup>6</sup> Apart from clarity and non-discriminatory price and non-price factors, Mr. Rausch explains that Consumers "should include as non-price, pre-qualification and value-added criteria in its competitive solicitations specific environmental, social, and governance components with respect to the manufacturing supply chain for solar generation."<sup>7</sup> He testifies, "Embodied carbon (pollution associated with manufacturing), labor conditions, and the reliability and resiliency of the supply chain to deliver essential parts should be considered as ancillary environmental and community benefits."<sup>8</sup> Mr. Rausch explains that the COVID-19 pandemic has highlighted many supply chain vulnerabilities that should be addressed through diversification and more domestic manufacturing, including the solar supply chain.<sup>9</sup>

In her PFD, the ALJ recommends that "Consumers should carefully consider HSC's

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<sup>5</sup> See, 4 Tr. 683-702.

<sup>6</sup> 7 Tr. 2213, ln. 17-19.

<sup>7</sup> 7 Tr. 2214, ln. 19-21.

<sup>8</sup> 7 Tr. 2214, ln. 22-24.

<sup>9</sup> 7 Tr. 2215.

recommendation to include objective criteria for lifecycle carbon and labor conditions, both of which can be, or are, certified by an independent party."<sup>10</sup> Clearly, the ALJ found merit in HSC's recommendations but erred by not recommending that the Commission condition its approval of Consumers' IRP on incorporating HSC's recommendations into Consumers' competitive solicitation process. The Commission should condition its approval of Consumers' IRP on including steps to address HSC's solar supply chain concerns.

The evidence in support of HSC's recommendations is not refuted and no party opposed HSC's recommendations. HSC recommends that the Commission direct Consumers to take steps that will create a more resilient and sustainable solar supply chain to meet Consumers' solar procurement goals. "More solar manufacturing is needed in a more distributed fashion and in a more decarbonized economy, such as the U.S. economy. Market demand signals, such as preferred purchasing of solar modules with lower levels of embodied carbon, can be a powerful incentive for investing in U.S. solar manufacturing."<sup>11</sup>

The Commission has a role to play in ensuring a more stable supply of solar energy. Citing an article written by former MPSC Chair Sally Talberg, Mr. Rausch recommends, "When evaluating utility solar proposals, state regulators can use broad criteria, such as bid price and social and policy benefits, such as mitigating price and supply risk and lower embodied carbon emissions."<sup>12</sup> The Michigan Legislature, itself, recently authorized the consideration of lifecycle carbon emissions in the selection process for solar projects at state-owned or leased facilities.<sup>13</sup>

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<sup>10</sup> PFD, p. 199.

<sup>11</sup> 7 Tr. 2216.

<sup>12</sup> 7 Tr. 2216, ln. 14-16.

<sup>13</sup> 7 Tr. 2217.

HSC recommends that the Commission direct Consumers to include in all future solar RFPs consideration of the value of the lifecycle carbon emissions in the manufacturing of solar equipment, labor conditions, and the reliability and resiliency of the supply chain to deliver essential parts as part of the bid selection process. Mr. Rausch identifies several industry tools to provide independent measurement and verification of lifecycle carbon, compliance with labor regulations, and diversity factors that can all be used by Consumers in its competitive solicitation process.<sup>14</sup> If Consumers is going to acquire more than 6,000 MW of solar resources by 2040, steps must be taken to create a more resilient and sustainable solar supply chain. Importantly, no party opposed HSC's recommendations. The Commission should recommend that Consumers include HSC's recommendations in a revised IRP and condition approval of any revised IRP on including steps to address HSC's solar supply chain concerns.

**III. THE ALJ ERRED IN RECOMMENDING THAT THE COMMISSION DIRECT CONSUMERS TO INITIATE A NEW CONTESTED CASE PROCEEDING TO ADDRESS RECOVERY OF THE EARLY RETIREMENT ASSETS COSTS. THE ALJ'S RECOMMENDATION INAPPROPRIATELY BIFURCATES THE RETIREMENT DECISION FROM THE COST RECOVERY DECISION.**

As part of its PCA, Consumers intends to retire early the Retirement Assets. As proposed by Consumers, the Retirement Assets will be replaced with the purchase of four natural gas resources and expanded levels of solar and demand-side resources to meet Consumers projected demand. Consumers is proposing to recover the remaining costs of the Retirement Assets through regulatory asset treatment. The proposed regulatory asset will be recovered from ratepayers through Consumers base rates.<sup>15</sup>

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<sup>14</sup> 7 Tr. 2217-20.

<sup>15</sup> See, Consumers' response to discovery request U21090-HSC-CE-285, admitted into evidence as Exhibit HSC-11 (PMR-6).

In her PFD, the ALJ recommends that the Commission approve Consumers' proposed regulatory asset treatment "for now" but recommends that the Commission direct Consumers to initiate another contested case proceeding to determine the appropriate return on the net book value of the Retirement Assets and determine whether all or some of the costs should be securitized.<sup>16</sup> The ALJ's recommendation bifurcates the Commission's decision on approval of the proposed early retirement of the Karn and Campbell units from the Commission's key decisions regarding cost recovery. The ALJ's proposal should be rejected.

Consumers' proposed regulatory asset treatment for the remaining book value of the Retirement Assets is reasonable. Consumers witness Maddipati proposes developing a regulatory asset and recovering the costs through traditional ratemaking over the original useful life of the assets. He says that securitizing the undepreciated portions of the plants will: 1) negatively impact Consumers' credit ratings metrics<sup>17</sup>; 2) require Consumers to write off a portion of the net book value of the Retirement Assets and record an impairment for accounting purposes, which would have serious detrimental impacts<sup>18</sup>; 3) raise serious questions regarding the stability of Michigan's regulatory environment and ultimately negatively impact or raise Consumers' long-term financing costs;<sup>19</sup> and 4) drive large increases in near term customer rates due to accelerated recovery.<sup>20</sup> These harmful effects from securitization should be avoided.

Other parties also determined that Consumers' regulatory asset proposals are reasonable. The MPSC Staff determined that Consumers' regulatory asset proposals for the Retirement

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<sup>16</sup> PFD, p. 182.

<sup>17</sup> See, 5 Tr. 955, ln. 15-16.

<sup>18</sup> 5 Tr. 951, ln 2-4, and 5 Tr. 952, ln. 22-23.

<sup>19</sup> 5 Tr. 953, ln. 16-20.

<sup>20</sup> 5 Tr. 953, ln. 25-26.

Assets are reasonable.<sup>21</sup> HSC's witness Feldman's testimony focuses on the appropriateness and potential impacts of utilizing securitization to finance certain costs related to the early retirement of the Retirement Assets, and concludes that securitization financing would not be appropriate for the Retirement Assets.<sup>22</sup>

Further, Consumers has made very clear that it will not retire the plants without approval of acceptable cost recovery.<sup>23</sup> As a result, the ALJ's proposal, if adopted, would jeopardize the early retirement of Consumers' fossil-fueled power plants.

Consumers' proposed regulatory asset cost recovery method for recovering the Retirement Assets costs is reasonable and prudent and should be approved in this proceeding.

**IV. THE ALJ ERRED IN RECOMMENDING THAT THE COMMISSION REQUIRE CONSUMERS TO PROVIDE A SECURITIZATION OPTION FOR RECOVERY OF EARLY RETIREMENT PLANT COSTS. THE COMMISSION SHOULD REJECT SECURITIZATION PROPOSALS.**

In her PFD, the ALJ recommends that the Commission direct Consumers to file a separate proceeding to address Consumers' cost recovery for the Retirement Assets that includes securitization proposals.<sup>24</sup> For the reasons stated in HSC's briefs and further below, the ALJ's proposal should be rejected.

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<sup>21</sup> MPSC Staff's Initial Brief, p. 103 ("If the Commission allows the Company to accelerate retirement for one or more plants, Staff agrees that the requested regulatory asset treatment for the remaining net book balances is reasonable and should be approved for each plant approved for accelerated retirement.").

<sup>22</sup> 7 Tr. 2244-45.

<sup>23</sup> See, Consumers' Exceptions, p. 9.

<sup>24</sup> PFD, pp. 182-183.

*A. Securitizing the early retirement costs of the Retirement Assets could be harmful to Consumers' ratepayers.*

Consumers' repeated use of securitization, combined with several over-lapping existing and pending securitizations, makes Consumers a remarkable outlier among utilities with respect to securitization. Figure 6 of Mr. Feldman's rebuttal testimony compares Consumers to the other utilities that have securitized undepreciated early plant retirement costs.<sup>25</sup> As shown in Figure 6, if Consumers were to securitize the Retirement Assets costs, Consumers' securitizations to net electric plant would be greater than any other U.S. utility that has financed early plant retirements with securitization bonds.<sup>26</sup> Figure 6 shows that Consumers' ratio would be 64% higher than the next closest data point (Consumers at 23.12% vs. Duke FL at 14.17%) and 238% higher than the average of the five other early plant retirement data points (Consumers at 23.12% vs. the average of 6.84%).<sup>27</sup> Securitization of the Retirement Assets costs could have significant adverse financial consequences for Consumers and its ratepayers, yet neither the ALJ nor the various securitization advocates in this proceeding assess the cost impact on Consumers' ratepayers from further securitizations.

HSC's witness Mr. Feldman explained that securitizing costs simply because the cost of securitized debt is likely to be lower than the utility's WACC is imprudent because the securitization: 1) might not provide benefits to ratepayers, 2) has the potential to negatively affect investors and the utility's credit ratings, and 3) creates the risk of other unintended consequences.<sup>28</sup> Mr. Feldman concludes that Consumers already has access to traditional debt

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<sup>25</sup> 7 Tr. 2253.

<sup>26</sup> 7 Tr. 2253.

<sup>27</sup> 7 Tr. 2253.

<sup>28</sup> 7 Tr. 2258-2260.

and equity markets on reasonable terms and that current circumstances do not warrant the use of securitization.<sup>29</sup>

Securitization is the wrong mechanism to finance the undepreciated book value of the Retirement Assets. The evidence in this case does not support securitization. The Commission should reject recommendations for securitization of the Retirement Assets costs.

***B. The Commission does not have the authority to order Consumers to file an application for a financing order.***

Even if the above explanations are not sufficient to warrant rejection of the proposals for securitization, which they are, the Commission should refrain from directing Consumers to file an application for securitization because the Commission does not have the legal authority to order Consumers to make the filing.

The Commission's authority to address an IRP is governed by the requirements of Section 6t of Act 341, MCL 460.6t. Generally speaking, the Commission is required to approve an IRP if the Commission determines that the IRP is "the most reasonable and prudent means of meeting the electric utility's energy and capacity needs," while balancing several enumerated factors, such as reliability, diversity of generation supply, etc.<sup>30</sup> If the Commission has recommended changes, then the Commission must set a schedule allowing parties to file comments and allowing the utility 30 days to consider the recommended changes and submit a revised IRP. If the utility submits a revised IRP, then the Commission must issue a final order either approving or denying the plan no later than 360 days after the IRP was first filed.<sup>31</sup> Importantly, the Commission does not have the authority to condition its approval of an IRP on

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<sup>29</sup> 7 Tr. 2260.

<sup>30</sup> MCL 460.6t(8).

<sup>31</sup> *Id.*

the filing of other applications in other cases, such as applications for a financing order under MCL 460.10i.

Further, the Commission's authority to issue a financing order is governed by the requirements of Public Act 142 of 2000, specifically MCL 460.10h-460.10o. Under MCL 460.10i, the Commission may issue a financing order "[u]pon the application of an electric utility."<sup>32</sup> Thus, the decision whether to apply for a financing order rests with the utility. The Commission does not have the authority to order a utility to file an application for a financing order or to issue a financing order absent the requisite application.<sup>33</sup>

Thus, directing Consumers' to initiate another proceeding that includes a securitization option is futile. Even if the Commission were determine that it prefers a securitization option for some or all of the Retirement Asset costs, the Commission cannot force Consumers to pursue securitization. The Commission cannot order Consumers to file an application for a financing order.

**V. THE ALJ ERRED IN FAILING TO RECOMMEND THAT THE COMMISSION MAKE CLEAR THAT ANY RESULTING SECURITIZATION SURCHARGES WILL NOT APPLY TO HSC WHILE TAKING SERVICE UNDER THE LTILRR.**

HSC filed the testimony of its witness Rausch to explain HSC's concerns with the possibility of more securitization surcharges for Consumers and how those surcharges could affect HSC. Additional securitization surcharges could impose substantial additional costs on HSC while taking service under its LTILRR contract with Consumers. For the reasons

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<sup>32</sup> MCL 460.10i(1).

<sup>33</sup> Consumers concurs. Consumers' witness Maddipati testified, "The Commission's role is to review a securitization application by the utility to determine whether it meets the statutory requirements to obtain a financing order. The Commission cannot order the utility to file such an application." 5 Tr. 974, ln. 17-19.

discussed in HSC's briefs, HSC opposes applying securitization charges to HSC for Consumers' Retirement Assets.<sup>34</sup> HSC recommended that if the Commission directs Consumers to pursue securitization for the remaining costs of the Retirement Assets, then the Commission should make clear that any resulting securitization charges will not apply to HSC.

In her PFD, the ALJ recommends that the Commission direct Consumers to file a separate proceeding to address Consumers' cost recovery for the Retirement Assets that includes a securitization proposal.<sup>35</sup> The ALJ, however, did not address HSC's recommendation that the Commission make clear that any resulting securitization surcharges not apply to HSC while taking service under the LTILRR. If the Commission erroneously directs Consumers to pursue securitization, as recommended by the ALJ, then the Commission should determine that any resulting surcharges will not be applied to the LTILRR customer.

## **VI. CONCLUSION AND PRAYER FOR RELIEF.**

For all the reasons explained in the preceding sections of these Exceptions and in HSC's briefs, HSC respectfully requests that the Commission 1) direct Consumers to include in all future solar RFPs consideration of the value of the lifecycle carbon emissions in the manufacturing of the solar equipment, labor conditions, and the reliability and resiliency of the supply chain to deliver essential parts, as part of the bid selection criteria; and 2) reject recommendations that the Commission direct Consumers to file a separate application to address the cost recovery for the remaining book value of the Retirement Assets, including a securitization proposal. The Commission should approve Consumers' proposed regulatory asset treatment for recovering the remaining book value of the Retirement Assets in this case.

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<sup>34</sup> See, HSC's Initial Brief, pp. 18-29 and HSC's Reply Brief, p. 8.

<sup>35</sup> PFD, pp. 182-183.

If the Commission, however, directs Consumers to file an application for a financing order for the early retirement costs of the proposed Retirement Assets, then the Commission should make clear that any surcharge resulting from any such application will not apply to HSC while taking service under the LTILRR contract.

*Respectfully submitted,*

**FRASER TREBILCOCK DAVIS & DUNLAP, P.C.**  
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Date: March 21, 2022

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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-21090

**CERTIFICATE OF SERVICE**

A. Louise Johnson hereby certifies that, on the 21<sup>st</sup> day of March 2022, she filed the *Exceptions of Hemlock Semiconductor Operations LLC* and a *Proof of Service* electronically with the Michigan Public Service Commission in the above docket and served them by electronic mail on the persons identified in the attached service list.

*/s/ A. Louise Johnson*

\_\_\_\_\_  
A. Louise Johnson

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