

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
CONSUMERS ENERGY COMPANY
for authority to increase its rates for the
generation and distribution of electricity
and for other relief.

Case No. **U-21389**
(e-file paperless)

**MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
CORRECTED EXCEPTIONS TO THE PROPOSAL FOR DECISION**

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

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In accordance with the schedule established for this case, the Michigan Public Service Commission (MPSC or Commission) Staff (Staff) files the following Exceptions to the Proposal for Decision issued by the Administrative Law Judge (ALJ) in Consumers Energy Company's application for authority to increase its rates for the generation and distribution of electricity and other relief. Staff's silence on any matter should not be construed as agreement with or acquiescence to any other party's position. Rather, Staff maintains all of its positions described in its testimony and briefs.

I. **Capital Expenses**

A. **The PFD erred by failing to adopt Staff's recommended disallowance of \$69,132,000 for HVD capital expenditures.**

The Commission should adopt Staff's test-year disallowance of \$69.132 million, which breaks down to \$53.289 million for a base rate reduction, and the remaining \$15.842 million allocated to the IRM, which accounts for two HVD programs. As explained in Staff's initial brief, the Company provided five-year historical spending data from 2018 up to 2023 which showed a year over year spending increase ranging from \$50 million to \$150 million. (Staff's initial brief, p 12.) So, to properly examine the test-year projections, Staff focused on the actual spending to determine the reasonability of the requested recovery. *Id.* at 13. Staff found that according to the Company's discovery responses "the actual expenses of HVD capital expense is approximately \$33 million...for the completed projects and about \$3 million, as shown in Exhibit S-11.2, for the working-in-process projects by

the end of May of 2023.” (5 TR 3858.) While the Company disagreed with Staff’s recommendation, Staff explained that:

simply because a project may be approved in a spending period, even where Staff may agree with the concept proposed project, does not mean that Staff may agree on a projected cost before proof that all costs have been reasonable and prudently incurred. Which is to say Staff’s position addressed the reasonableness of the level of cost the Company claimed would be spent in a short period time, indicating that the projected costs were inflated beyond necessity. [Staff’s initial brief, p 15.]

Furthermore, in its rebuttal testimony, though its witness Herrygers, claimed that a significantly greater amount than that provided in discovery, totaling,

\$58,596,000, should be recovered for the five months from 1/1 to 5/31 of 2023. (4 TR 1832-1833.) However, Staff reiterates its point made in its initial brief, that:

it is difficult to justify the additional \$58.6 million reported in rebuttal “simply because there is no explanation why and how the Company omitted the almost 7.5-fold spending; specifically, the amount of expenditure the Company provided is accurate to the cents; however, the Company left out more than \$22 million in spending for projects other than the largest 25 projects.

Staff reiterates that it has a hard time justifying, and hopes the Commission does too, “the amount of \$58,596,000 that the Company claimed in its rebuttal for the five months from 1/1 to 5/31 of 2023, simply because there is no explanation why and how the Company omitted the almost 7.5- fold spending; specifically, the amount of expenditure the Company provided is accurate to the cents; however, the Company left out more than \$22 million in spending for projects other than the largest 25 projects.” (Staff’s initial brief, p 16.) As such, Staff recommends the Commission reject the PFD’s recommendation and adopt its disallowance.

II. **Operating Expenses**

A. **Staff disagrees with the PFD's recommendation that Staff's recommendation for line clearing outside of the first zone be considered in the Company's 2025 EDIIP instead of its next rate case.**

Staff explained that it recommends that the Company adopt a more aggressive and feasible line clearing of the portions of circuits that are outside of the first zone. (Staff's initial brief, pp 196-197.) The PFD considered Staff's recommendation but then stated that Staff's recommendation was beyond the scope of 10-month rate cases and should instead be considered in the EDIIP which the Company recently filed in U-20147. (PFD, pp 399-400.) While Staff certainly understands the ALJ's concern related to rate case processing time, Staff does not agree with this recommendation because the next EDIIP will likely not be submitted until late 2025, which is nearly 2 years away. Waiting until the next EDIIP filing for the Company to analyze whether a program to clear more aggressively outside the first zone is reasonable could delay potential reliability benefits. Moving forward now with the analysis would allow the Company to see a potential increase in reliability sooner rather than later if more aggressive tree trimming is shown to be beneficial and incorporated into the Company's tree trimming plan. Therefore, Staff recommends that the Commission adopt its line clearing recommendations.

B. **Staff disagrees with the PFD's recommendation to adopt the Symmetric Performance Incentive Mechanism (SPIM).**

Staff explained that the SPIM should be rejected "for four main reasons:

(1) Staff supported the full service restoration expense for the test year; (2) The Commission rejected similar mechanisms in prior cases U-20963 and U-20697; (3) DTE Electric (DTE) does not have this mechanism for its storm restoration expense; and (4) In Case U-21305, the Commission ordered a third-party audit be completed by a consultant who will investigate Consumers and DTE's distribution systems. After the audit is completed, the results may show cost savings for Consumers Energy. (5 TR 3960–3961.) [Staff's initial brief, pp-88-89.]

Staff reiterates and stands by this analysis. The Commission should reject the SPIM. However, the PFD states the SPIM should be approved because it will protect ratepayers from overpaying for storm restoration expenses due to the increases in storms each year. Staff does not agree with this recommendation because, as stated above, (1) Staff is supporting the full service restoration expenses the Company is proposing; (2) Other companies do not have this mechanism for storm restoration expense; (3) the Commission has rejected the tracker in the Company's previous rate cases; and (4) Staff believes the third-party audit ordered by the Commission of Consumers Energy's distribution system could reveal cost savings towards storm restoration expenses.

III. Cost of Service and Rate Design

A. The ALJ erred in recommending approval of the Company's flawed delivered fuels electrification pilot (DFEP).

In spite of recognizing that the Company's DFEP proposal was not fully developed, the ALJ recommended "approval of the DFEP with the understanding that the utility will proactively work with Staff and interested intervenors to further develop the design and implementation details." (PFD, pp 590-591.)

However, as Staff noted, it would be inappropriate to approve the pilot in the instant case, as the proposal suffers from numerous flaws and lack of specification. (Staff Initial Brief, pp 184-190.) It is equally inappropriate to approve the pilot under the assumption that the flaws and omissions will be rectified to the point approval would be appropriate with no method of ensuring they will be. In addition, the Commission recently rejected a similarly flawed proposal made by DTE Electric Company, stating:

While the Commission appreciates the intent behind this proposed pilot, the myriad issues raised by the Staff, MNSC, and the DAAOs make it impossible to fully consider the proposal within the constraints of a time-limited rate case proceeding. Instead, the Commission encourages DTE Electric to work with stakeholders to develop a complete and effective pilot program and to use the stand-alone expedited pilot process to enable the review such a proposal deserves. MPSC Case No. U-21297, 12/1/23 Order, p. 256.

For these reasons, as well as those expressed in Staff's initial and reply briefs, the Company's DFEP proposal should be rejected and the Company should work with Staff and interested intervenors to attempt to rectify the deficiencies of the proposal for the future.

B. If the Commission approves the Company's proposed facilities allowance for Rate LED, then the allowance should only include revenues from the distribution charge and system contribution charge.

The ALJ agreed with Staff's positions regarding the Company's and ABATE's proposed changes to Rate LED. (PFD, pp 500-502.) The ALJ correctly recommended that the Commission deny the Company's proposed facilities allowance for Rate LED. (PFD, p 500.) However, the PFD does not match Staff's

proposal regarding the scenario where the Commission approves a facilities allowance for Rate LED. Specifically, the PFD states: “However, should the Commission choose to adopt the proposed facilities allowance, this PFD recommends the Commission adopt Staff’s recommendation that Rate LED customers be required to pay the same embedded distribution costs as others and a system contribution charge.” (PFD, p 500.) Staff’s actual recommendation is that the approved *facilities allowance* only include distribution revenues and system contribution charge revenues. (Staff Initial Br, p 116.) If the Commission approves the facilities allowance as proposed by the Company, then Staff further recommends that the new Rate LED customer’s applicable power supply revenue be net of interruptible credits. (*Id.*) Customers on Rate LED will already pay the established distribution and system contribution charges by taking service on the rate, while the actual contention between Staff, the Company, ABATE, and MNSC are what, if any, revenues should be included in the allowance. For the reasons presented in the PFD the Commission should deny the Company’s proposed facilities allowance, and if it is approved then the facilities allowance should only include revenue from distribution and the system contribution charges.

C. The Commission should direct Staff to be included in any meetings between the Company and ABATE regarding the development of acceptable tariff language for Rate GPTU.

The PFD concluded that the Company and ABATE were “talking past each other” regarding ABATE’s proposal to update Rate GPTU tariff language regarding the Company’s discretion in buying excess customer energy. (PFD, p 523.) The

PFD found that the Company and ABATE should therefore meet and develop appropriate tariff revisions for Rate GPTU. (*Id.*) Staff should be invited to any meeting between the Company and ABATE regarding tariff revisions for Rate GPTU to ensure that the joint proposal for revision is appropriate. For this reason, the Commission should direct the Company and ABATE to also include Staff in their discussions on the tariff language for Rate GPTU.

IV. **Other Issues**

A. **Staff maintains that the Commission should approve the Company's Investment Recovery Mechanism (IRM).**

Staff disagrees with the PFD's analysis supporting the Commission's rejection of the Company's IRM. Staff's focus is on ensuring monies are spent on the appropriate distribution system investments. To that end, Staff explained in its initial brief that the IRM should be approved with certain modifications, so that the Company initiates meetings with Staff and intervening parties well in advance of an IRM period to address planned spending within each of the IRM programs. Staff also notes that its recommendation is consistent with its position regarding the DTE Electric IRM. Staff stated:

The Company should meet with the MPSC Staff and other parties at least four months prior to the beginning of an IRM period to discuss planned spending within each of the IRM programs. This meeting should be scheduled and organized by the Company, and the other parties should include all the intervening parties in the Company's most recently filed rate case. These recommendations are consistent with Staff's recommendations in the Case No. U-21297 Staff Initial Brief regarding DTE's proposed IRM. [Staff's initial brief, p 148.]

The ALJ's PFD states that the IRM should be rejected for "three principal reasons." (PFD, p 532.) These reasons are that approving spending before the projects are planned, and then reviewing the costs post-investment lends itself to a reluctance to disallow capital expenses once they are incurred. *Id.* Next, the PFD points to arguments made by MNSC and UCC stating that "the "metrics" the company proposes to report are more in the line of program accomplishments (e.g., X number of miles of LVD lines replaced; Y number of substations rebuilt) rather than actual reliability metrics like reductions in SAIDI, SAIFI, or MEDs." (*Id.* at 532-533.) And lastly, the PFD states that it is "mystified" by the purported necessity of an IRM when the Company habitually files annual rate cases which present "a yearly opportunity to propose, and have reviewed, spending on resiliency and reliability programs without the need for an additional reconciliation proceeding." (*Id.* at 533.)

As described above and in Staff's initial brief, Staff still recommends the Commission approve the Company's IRM, with several modifications to the Company's proposal. An IRM will help ensure that approved spending on distribution system investments is spent on those investments. Therefore, the Commission should approve Staff's modifications to the Company's IRM.

B. The Distribution Deferral Mechanism should be terminated in 2026.

Because the ALJ recommends the Commission reject the Company's IRM, the ALJ also stated that in conjunction with that recommendation to reject the IRM,

“this PFD finds it premature for the Commission to terminate the distribution mechanism, the efficacy of which should be reevaluated in the company’s next rate case.” PFD, p 578. Staff disagrees. The PFD also stated that it:

finds Consumers’ arguments to be persuasive and recommends the Commission approve the company’s proposed distribution deferral mechanism, including all of Staff’s stipulations, except the proposal to terminate the mechanism in 2026. This PFD notes that while Walmart argues that deferral mechanisms in general should be rejected, it did not specifically address the distribution deferral mechanism proposed by the company. And MNSC Witness Jester supported the mechanism as reasonable. No party, except Consumers, addressed Staff’s stipulations. [PFD, pp 577-578.]

Regarding Consumers disagreement with Staff’s proposal to end the deferral mechanism in 2026, the PFD stated further:

Consumers only disagreed with Staff’s proposal to terminate the distribution deferral mechanism in 2026. In part, Staff supports ending the mechanism because the IRM, if approved, would create the incentive necessary to maintain reliability spending, however, as discussed in more detail above, this PFD recommends the Commission reject the IRM. [PFD, p 578.]

Therefore, Staff still recommends the distribution deferral mechanism be terminated in 2026. The ALJ is correct that Staff supports ending the mechanism in part because the IRM would create the incentive necessary to maintain reliability spending. Staff supports the IRM, with modifications, so it supports terminating the distribution deferral mechanism at the end of 2026.

C. The PFD did not address Staff's position regarding a stake and locate report and future rate case considerations.

The ALJ recommends the electric only staking program proposed by the Company should be approved (PFD, p 389.) Prior to recommending approval of the program, the PFD discusses Staff's recommendation for the Company to provide Staff with a report at the end of the three-year staking contract (PFD, p 386.) However, the PFD does not address Staff's recommended reporting that includes, at a minimum, objectives of the program, a list of itemized total costs broken down by year, and a summary of findings and improvement opportunities with future rate case considerations. (5 TR 3978.) Staff maintains that these recommendations are reasonable and therefore recommends the Commission adopt Staff's proposed reporting and future rate case considerations in addition to approval of the electric-only staking program.

V. Conclusion

For the reasons stated in these Exceptions to the PFD and in Staff's Reply Brief, Initial Brief and testimony and exhibits, Staff respectfully requests the Commission adopt all of Staff's positions therein.

Respectfully submitted,

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PROOF OF SERVICE

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Cherie A. R. Shea, being first duly sworn, deposes and says that on **January 11, 2024**, she served a true copy of **Michigan Public Service Commission Staff's Corrected Exceptions** upon the following parties **via email only**:

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Subscribed and sworn to before me
this 11th day of **January, 2024**.

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State of Michigan, County of Clinton
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My Commission Expires: 5-7-2025