



THE UNIVERSITY OF CHICAGO  
**THE LAW SCHOOL**  
Abrams Environmental  
Law Clinic

February 14, 2025

*Via E-Filing*

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

RE: MPSC Case No. U-21585

Dear Ms. Felice:

Please find enclosed the Exceptions to Proposal for Decision on Behalf of Urban Core Collective, along with proof of service for electronic filing in the above-referenced matter. Please do not hesitate to contact me with any questions or comments.

Sincerely,  
/s/ Jacob R. Schuhardt  
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xc: Parties to Case No. U-21585

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of U-21585  
**CONSUMERS ENERGY COMPANY** for  
authority to increase its rates for generation and ALJ Sally L. Wallace  
distribution of electricity and for other relief.

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**EXCEPTIONS OF URBAN CORE COLLECTIVE**

February 14, 2025

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## I. INTRODUCTION

While Urban Core Collective (“UCC”) agrees with much of the reasoning in the Proposal for Decision (PFD) including its rejection of the Company's proposed Return on Equity (“ROE”) and Investment Recovery Mechanism modifications,<sup>1</sup> certain critical issues require the Commission's reconsideration:

- A. Affordability: The Commission is legally obligated to consider affordability when considering increasing rates. Furthermore, the Commission should not wait for the Energy Affordability and Accessibility Collaborative (“EAAC”)’s recommendations to address the affordability crisis.
- B. Return on Equity: UCC agrees with the PFD in rejecting the Company’s requested ROE, but argues that the Commission should lower the ROE as much as possible and should not exceed the PFD’s recommended 9.50%.
- C. Community Solar: The Commission should order a more explicit directive of an amended straw proposal or pilot proposal to better facilitate further discussions of community solar in the next VGP case.
- D. Environmental Justice: UCC agrees with the PFD’s determination that investment details must be scrutinized by all interested parties before Commission approval, and requests that the Commission explicitly require Consumers to provide sufficient details in their next rate case to support at least \$60 million of investment in EJ communities, in line with the Company’s referenced EJ Resiliency Plan. UCC also requests that the Commission require future EJ Resiliency Plan proposals in initial

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<sup>1</sup> Proposal for Decision [hereinafter PFD], at 380, 491.

rate case or grid planning filings to include project-specific details, implementation timelines, and evidence of community input in investment prioritization.

- E. Summer Protection Plan: The Commission should reject the PFD’s deferral of summer disconnection protections to the EAAC. The Company's current 90-degree temperature threshold fails to protect vulnerable households during dangerous heat conditions, falling short of more protective standards already adopted in other Midwestern states. Given these documented risks, the Commission should act to address this issue in this case.

## II. ARGUMENT

### A. The PFD failed to adequately consider affordability.

#### 1. The Commission is legally required to consider affordability.

The Commission has a statutory obligation under Michigan law to consider affordability when setting rates.<sup>2</sup> Michigan Law mandates that the Commission set “just and reasonable rates.”<sup>3</sup> Whether rates would result in a significant increase in customer shutoffs and/or impose substantial financial hardships on customers is facially relevant to whether those rates are just and reasonable. Indeed, it is unclear how rates that prevent large numbers of customers from accessing energy due to an inability to pay the rates could be “just” or “reasonable.” As such, determining whether the Company’s proposed rates are “just and reasonable” must require at least some consideration of evidence indicating whether customers can afford the proposed rates.

Furthermore, the Court of Appeals of Michigan has explained that “[t]he ratemaking process involves a balancing of investor and consumer interests” and that the Commission may

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<sup>2</sup> See UCC Initial Brief at 11–12.

<sup>3</sup> MCL § 460.557(4).

consider “all lawful elements” in setting rates, including cost.<sup>4</sup> Affordability is a critical consumer interest because customers who cannot afford to pay for electricity will not be able to access or benefit from any of the Company’s investments. Thus, as UCC argued in its initial brief, the Commission must at least consider affordability in order to balance investor and consumer interests in setting rates.<sup>5</sup>

Curiously, the PFD failed to address these legal arguments at all. Thus, the UCC strongly requests that the Commission provide clear answers to the following questions:

1. Does the Commission’s interpretation of its statutory obligation to set “just and reasonable” rates, and/or its obligation to balance investor and consumer interests, require that it consider whether customers can afford rates during the ratemaking process?
2. If the Commission believes that it must consider whether customers can afford rates, what evidence in the record is the Commission relying on to determine that customers can afford any rate increase?

It is important that the Commission answer these questions, not only to provide the legal basis for the order in this case, but also for ratepayers to better understand how the Commission views its mandate, and to allow communities to more effectively engage in regulatory proceedings.

**2. The Commission should not wait for the EAAC’s recommendations to address the issue of affordability.**

In addition to the fact that the Commission has a statutory obligation to consider affordability in this case, the Commission should not leave affordability considerations to the

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<sup>4</sup> *Ass’n of Bus. Advocating Tariff Equity v. Pub. Serv. Comm’n*, 208 Mich. App. 248, 258–59, 267 (Mich. Ct. App. 1994).

<sup>5</sup> UCC Initial Brief at 11-12.

EAAC because the EAAC is simply too slow to provide the necessary assistance to customers. In recent years, the Commission has refused to consider affordability in rate cases and has instead passed the issue to the EAAC.<sup>6</sup> However, the EAAC proceedings have been ongoing for almost four years<sup>7</sup> and have not resulted in any meaningful progress towards addressing the unaffordability of the Company's rates. No party has provided sufficient evidence that such a delay will come to an end with sufficient urgency.

The Commission should similarly reject the PFD's recommendation to delay any action on a percentage of income payment plan (PIPP) program until after the EAAC has completed its process.<sup>8</sup> The PFD recommends leaving consideration of any action to move towards a PIPP program to the EAAC.<sup>9</sup> However, as discussed in UCC's initial brief, the EAAC's analysis on the issue of affordability has not been forthcoming in a timely manner.<sup>10</sup> Given the urgency of the affordability crisis, the Commission should ensure that the Company makes progress on review of its PIPP pilot and begin to move towards implementation as quickly as possible. Since Consumers' pilot is entering its final phase<sup>11</sup> and should be finished by the next rate case, the Commission should order Consumers to provide an analysis of its results from its pilot and a proposal for a PIPP program in the next rate case.

If the Commission continues to refuse to take affordability into account in rate cases, then the Commission should — at the very least — implement UCC's and Witness Reyes's recommendation to wait to approve an increase in rates until after the EAAC issues its

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<sup>6</sup> See, e.g., *In re Consumers Energy Co.*, MPSC Case No. U-21389, MPSC Order (March 1, 2024), at 289–90; *In re DTE Gas Co.*, MPSC Case No. U-21291, MPSC Order (Nov. 7, 2024), at 207–08.

<sup>7</sup> See *In re Response to COVID-19*, MPSC Case No. U-20757, EAAC Interim Report (Dec. 17, 2021), available at <https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y000001VqhIAAS>.

<sup>8</sup> PFD at 534.

<sup>9</sup> *Id.*

<sup>10</sup> UCC Initial Brief at 12–13.

<sup>11</sup> See McLean Rebuttal Testimony at 5 TR 2193.

recommendations.<sup>12</sup> Delaying rate increases until the EAAC has presented its recommendations is important for three reasons. First, without an analysis on the affordability of rates, the Commission cannot know the impact of the rate increase on customers. It would be imprudent to increase the energy burden on customers without understanding the impact of that decision.

Second, the Company's low-income customers cannot afford to have their energy bills continue to rise without any additional affordability assistance. There is significant evidence in the record that Michigan customers are already struggling under high rates. For example, in Witness Cira-Reyes' direct testimony, he cites data showing that between February 6 and March 4, 2024, nearly one-third of Michiganders reported "some frequency" of foregoing other basic needs to pay for energy, and nearly one-fifth reported keeping their homes at unsafe temperatures.<sup>13</sup> Customers simply cannot afford additional rate increases while waiting for the EAAC.

Third, the EAAC's analysis and recommendations will likely change based on the severity of the affordability crisis, and the severity of the affordability crisis will be impacted by any increase in rates. As such, any rate increase before the EAAC's analysis is complete would be likely to undercut the EAAC's analysis, and could make its recommendations inconsistent with the magnitude of the challenge or otherwise obsolete.

Perplexingly, the ALJ determined that waiting until the EAAC issues its recommendations before approving significant rate increases "ignores the balancing of investor and consumer interests required in setting just and reasonable rates."<sup>14</sup> By making this argument

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<sup>12</sup> PFD at 547.

<sup>13</sup> See Cira-Reyes Direct Testimony at 5 TR 3487 citing *In re DTE Gas Co.*, MPSC Case No. U-21291, Schott Direct Testimony, (May 7, 2024) at 29; see also UCC Initial Brief at 8-10 (explaining how none of the Company's current bill assistance programs are sufficient to address unaffordable rates).

<sup>14</sup> PFD at 547.

in the PFD, the ALJ must be implicitly conducting some sort of balancing of investor and consumer interests. However, the PFD is devoid of any discussion of balancing of investor and consumer interests on this issue. What is the ALJ relying on in making their determination that the balance of investor and consumer interests is in favor of additional rate increases while delaying action on addressing affordability? UCC requests that the Commission clearly delineate its balancing of investor and consumer interests on this issue.

In actuality, the Commission would be “ignoring the balancing of investor and consumer interests” if it approves significant rate increases without considering affordability. As discussed above, affordability is a key consumer interest, and the Commission cannot balance something it refuses to consider. If the Commission does not consider affordability before approving rate increases, it will be neglecting its legal duty to balance investor and consumer interests.

**B. The Commission should lower the ROE as much as possible, and at least to the PFD’s recommended 9.50%.**

As the UCC argued in its briefing, the Commission should lower Consumers’ ROE as much as possible because of the Company’s poor performance and high costs. The MPSC Staff’s analysis in Consumers’ last rate case showed that, compared to utilities in other states in Michigan’s census division that feature similar vegetation and weather to Michigan, Consumers Energy provides unreliable service at high rates.<sup>15</sup> Despite Consumers having some of the most frequent and long-lasting service interruptions in this group of utilities, Michigan was the state in the census division with the highest average electric rates in 2021.<sup>16</sup>

To the extent that the Commission refuses to select a lower number, the Commission should at least reduce the Company’s ROE to the 9.50% that the ALJ found was appropriate in

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<sup>15</sup> *In re Consumers Energy Co.*, MPSC Case No. U-21389, Wang Direct Testimony (August 29, 2023), at 30.

<sup>16</sup> *Id.* at 12–31.

the PFD.<sup>17</sup> As the PFD acknowledges, this value is closest to the averages of accepted models and recent state-authorized ROEs.<sup>18</sup> Moreover, the ALJ asserted that an ROE of 9.50% would be “more than sufficient for the Company to maintain a strong credit rating and to attract capital.”<sup>19</sup> Thus, because Consumers has provided unreliable service at high prices compared to similar utilities and an ROE of 9.50% would still enable it to keep up a strong credit rating and capital, the Commission should lower Consumers’ ROE as much as possible and at least to 9.50%.

**C. The PFD fails to adequately address community solar.**

The PFD’s failure to meaningfully engage with UCC and other intervenors’ arguments regarding community solar is inappropriate for two reasons. First, the PFD ignores evidence that community solar is a substantive issue in this rate case. Second, even if the Commission refuses to resolve the issue of community solar in this case, the PFD fails to recommend that the Commission take any meaningful step that would better position the Commission to consider this issue in the Company’s future VGP filing.

**1. The PFD errs in concluding community solar is not an issue in this case.**

The PFD asserts that “[c]ommunity solar is not at issue in this case[.]”<sup>20</sup> That is not accurate. First, as discussed above, the Commission must consider affordability when setting rates. The record in this case demonstrates that community solar, as UCC has argued for in this

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<sup>17</sup> PFD at 380–81.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 553.

case, is linked to affordability.<sup>21</sup> Given community solar's potential to help address the affordability crisis, is appropriate for the Commission to consider the issue in this case.

Furthermore, improving reliability of distribution infrastructure is among the Company's primary objectives in this case. In pursuit of these goals, the Company contemplates future upgrades to the grid to accommodate renewable energy.<sup>22</sup> For the Commission to devote considerable resources to analyzing these issues without considering the role community solar may play in the long-term viability of the Company's investments would be a mistake. Put simply, if a community solar plan is eventually implemented, the Company will have to navigate its integration into the grid and any accompanying changes to energy distribution. Overlooking community solar at this juncture makes the discussion of these investments incomplete, undermining efficiency. It would be detrimental to decline to consider community solar in a case where distribution investments are a principal focus.

As such, in accordance with the specific recommendations made in UCC's briefing,<sup>23</sup> UCC implores the Commission to direct the Company to amend its straw proposal before the Company's next VGP case.

Furthermore, UCC notes that in the Commission's discussion of community solar in its order in Case No. U-21374, the Commission found insufficient Michigan-specific data to support a full-fledged community solar program at this time.<sup>24</sup> If the Commission's desire for appropriate data is genuine, the logical next step would be to require the Company to collect this data through a pilot program. Explicitly ordering the Company to devise a pilot proposal for a

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<sup>21</sup> UCC Initial Brief at 22–23 (describing the affordability benefits of community solar).

<sup>22</sup> *See, e.g.* PFD at 105; Myers Direct Testimony at 4 TR 361–62.

<sup>23</sup> UCC Initial Brief at 26–28.

<sup>24</sup> *In re DTE Electric Co.*, MPSC Case No. U-21534, MPSC Order (Jan. 23, 2025) [hereinafter U-21534 MPSC Order], at 406.

community solar program in its next VGP case, informed by extensive stakeholder input in this case, would be a simple and efficient way to attain this necessary data. UCC's recommendations provide an opportunity for the Commission to move forward on the process of collecting data on the benefits and drawbacks of community solar without harmful and purposeless delays waiting for the next VGP proceeding.

**2. In deferring the issue of community solar, the PFD inadequately considers the Commission's options to address the issue in this case.**

The PFD's reasoning improperly delays the consideration of community solar to a future VGP filing when the record already contains sufficient evidence to support a basic framework now. In Case No. U-21374, the Commission directed Consumers to make improvements to its community solar program.<sup>25</sup> However, even though "the Commission has already directed Consumers to address its community solar program in its next VGP filing," the Commission is not precluded from proactively ordering the Company to take further action in evaluating the merits of a community solar program. The Commission should not abscond the opportunity to act on this issue, if only to ease future discussions of community solar.<sup>26</sup>

In its order in U-21354, the Commission expressed its support of "community solar proposals from the Company that work with community organizations to address their concerns and provide the opportunity for cost-effective community solar."<sup>27</sup> The testimony surrounding community solar in this case is responsive to this statement of support, and the Commission should take advantage of this opportunity to make specific progress in this area.

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<sup>25</sup> PFD at 553.

<sup>26</sup> Indeed, the PFD did actually make one proactive recommendation on the issue of community solar regarding credit structure. *See* PFD at 553. In offering this recommendation, the PFD appears to recognize that some directives may be appropriate in this case, even if just relating to a future evaluation.

<sup>27</sup> U-21534 Order at 406.

The Commission can and should order concrete amendments to the Company's current program in line with its directive in U-21354, including those previously proposed by UCC.<sup>28</sup> Indeed, the Company can address this issue in its next VGP case while requiring changes to the basic design of the existing program in the interim. These changes would make the analysis of the issue more meaningful and effective in the upcoming VGP case.

**D. The Commission should require the Company to provide sufficient information on its EJ Resiliency Plan in its next rate case.**

While UCC has argued for and continues to support providing sorely needed infrastructure investments in EJ communities as quickly as feasible, UCC also understands the risks in approving expenditures without proper information provided in the record. In this case, both the \$10 million proposal and the broader \$600 million EJ Resiliency Plan appeared only in rebuttal testimony, preventing meaningful discovery or responsive testimony.<sup>29</sup> Allowing such significant investments to proceed without initial filing requirements would create a troubling precedent that could incentivize utilities to withhold critical program details from their initial applications.

The need for upfront filing requirements is particularly acute given the documented reliability disparities affecting EJ communities. Consumers' own analysis revealed that EJ areas performed worse than comparable non-EJ urban tracts in nine of twelve reliability metrics.<sup>30</sup> The Company identified 72 circuits serving EJ communities that experience below-average reliability.<sup>31</sup> Without clear filing requirements, addressing these disparities could face unnecessary delays while procedural issues are resolved in future cases.

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<sup>28</sup> UCC Initial Brief at 26.

<sup>29</sup> Kelly Rebuttal Testimony at 5 Tr 1017-18.

<sup>30</sup> *Id.* at 5 Tr 1016; Figure 4.

<sup>31</sup> *Id.* at 5 Tr 1009-10.

The Commission should therefore modify the PFD's recommendation to require future EJ Resiliency Plan proposals be included in initial rate case or grid planning filings with: (1) project-specific cost estimates and implementation timelines, (2) analysis demonstrating how investments will address documented reliability disparities, (3) evidence of community input in investment prioritization. These requirements would give substance to the PFD's recognition that “the details of any additional spending must be scrutinized by all interested parties before being approved” while ensuring timely, effective review of investments critical to improving reliability for vulnerable communities.<sup>32</sup>

In addition to these requirements, the Commission should also act to ensure that the Company does not fail to prioritize its investments in EJ communities. The Company has put forward a proposal to invest \$600 million in infrastructure in EJ communities over the next ten years.<sup>33</sup> The Commission should ensure that the Company follows this timeline by requiring the Company to propose at least \$60 million of these investments in the Company’s next rate case.

**E. The Commission should take immediate action on summer disconnection protections rather than deferring to the EAAC.**

The PFD's recommendation to defer consideration of summer disconnection protections to the Energy Affordability and Accessibility Collaborative (“EAAC”) cannot be reconciled with Consumers' own disconnection data. While the PFD suggests that “further analysis is needed,” the record demonstrates clear and escalating patterns of summer disconnections that demand immediate Commission action.<sup>34</sup>

The record shows summer shutoffs in Consumers’ service territory are substantially increasing. As argued in UCC’s initial brief, Consumers disconnected a total of 13,279

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<sup>32</sup> PFD at 515.

<sup>33</sup> Kelly Rebuttal Testimony at 5 TR 1017-18.

<sup>34</sup> PFD at 531-32.

customers in July and August of 2024, a 15.7% increase from those months in 2023.<sup>35</sup> Such a significant increase indicates that an urgent issue is rapidly worsening, and requires appropriate action by the Commission.

Rising temperatures have fundamentally changed cooling needs and disconnection risks for Michigan families. The Energy Information Administration has documented steady increases in cooling degree days since 1990, meaning families “that may have not had cooling, or only needed to turn on their air conditioners during brief heat waves in prior decades are now using cooling more frequently, for longer periods of time, and are paying the additional cost.”<sup>36</sup> These increasing cooling requirements particularly affect residents in multi-story buildings where it can get especially hot.<sup>37</sup> The health consequences of losing access to cooling are dire - nationally, heat-related deaths in 2023 were triple the 2004-2018 average, with 2,302 deaths compared to the historical average of 702.<sup>38</sup>

The PFD's reliance on Consumers' 90-degree Extreme Weather Policy as justification for deferral to the EAAC ignores both current practices in other states and the documented inadequacy of temperature-only thresholds. Multiple states have adopted more protective standards based on National Weather Service heat advisories rather than arbitrary temperature cutoffs. Georgia prohibits disconnections during “National Weather Service Heat Advisory or Excessive Heat Warning,” while Minnesota bans disconnections “when an excessive heat watch,

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<sup>35</sup> UCC Initial Brief at 29-30.

<sup>36</sup> Ex. UCC-16, CENTER FOR ENERGY POVERTY AND CLIMATE AND NATIONAL ENERGY ASSISTANCE DIRECTORS ASSOCIATION, CRISIS IN ENERGY AFFORDABILITY, (July 2024) (available at <https://energyprograms.org/wp-content/uploads/2024/07/shutoffprotections.pdf>), at 4.

<sup>37</sup> See Ex.UCC-12, Diana Hernández, *Understanding “Energy Insecurity” and Why It Matters to Health*, SOC. SCI. & MED. (Oct. 2016) at 3 (“It's so hot and we live on the third floor. It is burning hot. It is extremely hot.”)

<sup>38</sup> Ex.UCC-16 at 4.

heat advisory, or excessive heat warning has been issued by the National Weather Service.”<sup>39</sup> Wisconsin and Illinois have adopted similar protections.<sup>40</sup> These states recognize the fact that summer heat vulnerability extends beyond 90-degree days.

The Commission should require Consumers to implement enhanced summer disconnection protections aligned with current best practices in other states. At minimum, these protections should extend to periods of National Weather Service heat advisories, which “are based on hourly heat index rather than temperature alone and can be triggered below 90 degrees Fahrenheit.”<sup>41</sup> While it may be appropriate for the EAAC to develop additional long-term recommendations, the clear record evidence of growing summer disconnection risks demands immediate Commission action to protect vulnerable households during increasingly dangerous summer months.

### III. CONCLUSION AND PRAYERS FOR RELIEF

Consistent with the concerns and positions articulated above, the Urban Core Collective respectfully requests that the Commission reject the PFD’s recommendations consistent with the exceptions identified here and the positions taken by UCC in its Initial and Reply briefs.

#### A. With respect to affordability:

1. Respond to UCC’s argument regarding the Commission’s legal obligation to consider affordability and provide a ruling on affordability;
2. Require the Company to provide a PIPP proposal in its next rate case; and
3. Take action to address affordability in this case.

#### B. With respect to return on equity:

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<sup>39</sup> *Id.* at 13.

<sup>40</sup> *Id.* at 12, 15.

<sup>41</sup> Attorney General Initial Brief at 214 citing *Heat Awareness*, National Weather Service, <https://www.weather.gov/dtx/heataware2>.

1. Reduce the ROE as much as possible and no higher than 9.50%, given the Company's poor performance and high costs relative to peer utilities.

C. With respect to community solar:

1. Direct the Company to file an amended community solar pilot proposal; and
2. Require the Company to provide a proposal for a community solar pilot in its next VGP case to acquire necessary information.

D. With respect to environmental justice and infrastructure investment:

1. Require that Consumers provide sufficient evidence for future EJ investment proposals in their next rate case including: (1) Project-specific cost estimates and implementation timelines; (2) Analysis demonstrating how investments will address documented reliability disparities; and (3) Evidence of community input in investment prioritization; and
2. Require the Company to propose at least \$60 million of investments in reliability in EJ communities in their next rate case.

E. With respect to summer disconnection protections:

1. Reject the PFD's deferral to the EAAC; and
2. Require immediate implementation of enhanced summer disconnection protections aligned with current best practices in other states.

[Signature to follow on next page.]

Abrams Environmental Law Clinic  
Counsel for Urban Core Collective

Date: February 14, 2025

By: /s/ Jacob R. Schuhardt  
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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 generation and  
 distribution of electricity and for other relief.

U-21585

ALJ Sally L. Wallace

**PROOF OF SERVICE**

On the date below, an electronic copy of the Exceptions to Proposal for Decision on Behalf of Urban Core Collective was served on the following:

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The statements above are true to the best of my knowledge, information, and belief.

Abrams Environmental Law Clinic  
Counsel for Urban Core Collective

Date: February 14, 2025

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