

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
Consumers Energy Company)	
for authority to increase its rates for)	Case No. U-21870
the generation and distribution of)	
electricity and for other relief.)	
_____)	

RULING ON MOTION TO STRIKE

On October 23, 2025, the Michigan Environmental Council (“MEC”) filed its Motion to Strike (“Motion”) seeking to strike portions of Consumers’ witness Richard Blumenstock’s rebuttal to MEC witness Tyler Comings regarding two capital expenditures at the Jackson gas plant, along with related Rebuttal Exhibits A-202 and A-203.¹ On October 29, 2025, Consumers Energy (“Consumers”) filed its Response to Michigan Environmental Council’s Motion to Strike (“Response”), arguing that the Motion is without merit and unsupported.

On November 4, 2025, at the beginning of the scheduled evidentiary hearing in this matter, arguments on the Motion by MEC and Consumers were heard. At the conclusion of the arguments, having heard MEC’s multiple assertions that Consumers had not produced information regarding the rebuttal evidence that MEC had requested in its discovery request and Consumers’ multiple assertions that MEC in fact had not

¹ Motion, p. 2.

requested the information, this ALJ requested that MEC and Consumers submit a supplemental filing addressing this disputed discovery request and attaching the discovery request and response thereto. Both parties filed their supplemental filings on November 6, 2025.

By its Motion, MEC makes two arguments in favor of striking the rebuttal testimony and exhibits.

First, MEC asserts that the subject rebuttal testimony and rebuttal exhibits are improper rebuttal because they attempt to rehabilitate or supplement Consumers' direct case.² In that regard, MEC states that its witness Comings testified that Consumers evaluated the energy value of the GSU Transformer project using the Aurora computer model, and that Mr. Comings explained that Consumers used inaccurate assumptions about the capacity factor of the Jackson plant and failed to include the probability of failure of the existing equipment in its analysis – both of which skewed the results to overstate the benefit-cost ratio of the project.³

MEC states that on rebuttal, Mr. Blumenstock agreed with Mr. Comings about both the capacity factor assumption and the treatment of probability of failure in the evaluation of the GSU Transformer project.⁴ MEC adds that Mr. Blumenstock then testified that Consumers performed a new analysis with revised assumptions specified by Mr. Comings and the new analysis supported the project.⁵ MEC states that based on the new analysis, Consumers prepared a new Concept Project Approval which Mr.

² Id.

³ Id., p. 3, citing Blumenstock Rebuttal, p. 29, 30-31. Citations omitted.

⁴ Id.

⁵ Id.

Blumenstock sponsors as rebuttal exhibit A-202.⁶ MEC adds that Consumers did the new analysis using a different model, the Copperleaf model, and that the new analysis states: “The original business case relied on Aurora modeling and assumptions that overstated capacity factor and understated derate risk.”⁷

With respect to the VIGV project, MEC states that Mr. Comings testified that Consumers also used the Aurora model to estimate the value of the project, but would not produce any calculations or other analytical support for that evaluation.⁸ MEC adds that, on rebuttal, Mr. Blumenstock conceded that the company used an inaccurate capacity factor to model the VIGV project, and that Mr. Blumenstock says Consumers re-evaluated the project using the Copperleaf model and the results supported the project.⁹ MEC asserts Mr. Blumenstock sponsored a new Concept Project Approval as Exhibit A-203.¹⁰

In support of its assertion that the subject testimony is improper rebuttal, MEC notes that the scheduling memo in this case provides that rebuttal testimony “should not be used for the purpose of rehabilitating or supplementing a party’s direct case.”¹¹ MEC points to the Commission’s order in Case No. U-8871, whereby the Commission affirmed an ALJ’s ruling that struck rebuttal testimony from the Attorney General (“AG”), which testimony incorporated assumptions from Staff’s direct testimony into the AG witness’s model and compared the results, with the Commission stating: “The record

⁶ Id.

⁷ Id., citing Ex. A-202, p. 1.

⁸ Id.

⁹ Id., citing Blumenstock Rebuttal, p. 32.

¹⁰ Id.

¹¹ Id., p. 5, citing Amended Scheduling Memo, September 5, 2025, p 2.

supports his conclusion that Dr. Rosen's rebuttal testimony was merely rehabilitative of his direct testimony."¹²

MEC also points to Consumers' 2021 electric rate case wherein the Commission affirmed Staff's motion to strike Consumers' rebuttal that introduced new information to support a capital project at the Jackson plant, noting that Staff explained that "rebuttal is not the time to introduce new supporting evidence," and that the Commission agreed, stating "[t]he company's revisions and additions to its spending projections were introduced too late in the case for the parties to adequately evaluate."¹³

Second, MEC argues that the subject testimony and exhibits lack foundation because they were created using a model that Consumers refuses to provide access to, preventing MEC from evaluating or challenging the claimed model results.¹⁴ MEC asserts that Consumers states in testimony and discovery that it cannot or will not produce supporting calculations from the Copperleaf model used to conduct the new evaluation of the GSU Transformer project, the results of which Mr. Blumenstock describes in rebuttal.¹⁵ MEC argues that without the calculations, and with no access to the model, Mr. Comings and MEC cannot evaluate or challenge the new results that Mr. Blumenstock claims support the project.¹⁶

Similarly, with respect to the VIGV project, MEC states that Mr. Comings testified that Consumers also used the Aurora model to estimate the value of the project but

¹² Id., citing Case No. U-8871 *et al*, Order, January 31, 1989, pp 152-54. In its Response, Consumers asserts that the quoted statement is on pages 96-97. Response, p. 3, n. 2.

¹³ Id., citing Case No. U-20963, Order, December 22, 2021, pp 109-11.

¹⁴ Id., p. 2.

¹⁵ Id., p. 3-4, citing Attachment 2, Discovery Response U21870-MNSC-CE-0224; Blumenstock Rebuttal, p 33. MEC's footnote 8 also states that "[d]iscovery on certain other capital projects referenced the Copperleaf model, but the new concept approvals for the GSU Transformer and VIGV projects are the first documents for those projects that refer to Copperleaf."

¹⁶ Id., p. 4.

would not produce any calculations or other analytical support for that evaluation.¹⁷ Thus, regarding rebuttal Ex. A-203, MEC again argues that, because Consumers will not produce the supporting calculations from the Copperleaf model or provide access to it, Mr. Comings and MEC cannot evaluate or challenge the new results that Mr. Blumenstock claims support the project.¹⁸

In its Response, Consumers argues that Mr. Blumenstock's rebuttal testimony and exhibits are proper rebuttal evidence that directly responds to MEC's proposed disallowance.¹⁹

Consumers states that in his direct testimony, Mr. Comings argued that there were several deficiencies in Mr. Blumenstock's modeling of the energy and capacity benefits associated with two capital projects underway at Consumers' Jackson generating plant, and that Mr. Comings concluded that there was not support for Mr. Blumenstock's claim that the benefits of the projects justified the costs and recommended that the Commission disallow both projects.²⁰ Consumers argues that Mr. Comings' proposed disallowance was tied to his claim that, "if some or all of these assumptions are not reasonable, then the energy or capacity value estimate is not reasonable."²¹ Consumers states that Mr. Blumenstock responded to this testimony in his rebuttal by correcting some of the assumptions contained in his original analysis in order to show that the energy and capacity benefits of both capital projects nevertheless

¹⁷ Id., p. 4, citing Comings Direct, p 20 and Ex MEC-12, p 7.

¹⁸ Id.

¹⁹ Response, p. 1.

²⁰ Id., p. 1-2 citing Comings direct testimony, p. 17-20.

²¹ Id., p. 2, citing Comings direct testimony, p. 16.

remained reasonable to justify the costs.²² Consumers argues that although the “magnitude of the benefit was not as great as originally shown, the claim that the energy and capacity value was not reasonable to support the projects is not true.”²³

In support of its arguments, Consumers states that the Commission has long adopted the statement regarding the proper use of rebuttal testimony from the opinion in *Kirk v Ford Motor Co*, 147 Mich App 337, 345; 383 NW2d 193 (1985)(“*Kirk*”): “Rebuttal evidence is broadly defined as that given by one party to contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same.”²⁴ Consumers argues that the portions of Mr. Blumenstock’s rebuttal testimony and exhibits identified in MEC’s Motion was offered directly to “contradict” and to “disprove” testimony by Mr. Comings and it “tend[s] directly to weaken” Mr. Comings’ argument that the deficiencies in Mr. Blumenstock’s original assumptions render the financial justification for these projects unreasonable.²⁵ Consumers adds that Mr. Blumenstock’s testimony “explains” the impact of the evidence presented by Mr. Comings; specifically, that Mr. Blumenstock “explains that Mr. Comings’ observations about the assumptions, while in some cases true, nevertheless do not compel the result Mr. Comings urges on the Commission.”²⁶

Consumers argues that MEC attempts to cast Mr. Blumenstock’s testimony as “rehabilitation,” rather than rebuttal, “makes no allowance for the possibility” that a particular piece of testimony could serve both a “rebuttal function and a rehabilitation

²² Id.

²³ Id.

²⁴ Id., citing Case Nos. U-8871, Order, January 31, 1989, page 96; Case No. U-15985, Order, June 3, 2010, page 23.

²⁵ Id., p. 2-3.

²⁶ Id., p. 3.

function” simultaneously.²⁷ Consumers adds that nothing in the Commission’s precedents indicates that testimony satisfying the standards for proper rebuttal testimony is nevertheless rendered improper if it also happens to rehabilitate the witness’s earlier testimony.²⁸

Regarding MEC’s citation to Case No. U-8871, Consumers argues that MEC fails to accurately analyze the Commission’s decision in that case, asserting that the Commission identified a combination of two issues with the proposed rebuttal testimony; namely, that it was “merely rehabilitative” and that it failed to “clearly indicate what specifically was being rebutted.”²⁹

Consumers argues that rehabilitation is not a generally impermissible practice as MEC suggests and that rehabilitation is specifically permitted by the Michigan Court Rules.³⁰ Consumers asserts that, consistent with the correct analysis of the Commission’s decision in Case No. U-8871, “it is clear that there is no general prohibition on using rebuttal testimony to rehabilitate a witness’s testimony so long as the testimony is, in fact, rebutting something at the same time.”³¹

Finally, Consumers argues that Mr. Comings “opened the door” to Mr. Blumenstock’s response by testifying, “I encourage the Company to address these issues and re-run the model if it wants to seek recovery for this project’s costs.”³²

²⁷ Id.

²⁸ Id.

²⁹ Id., citing Case No. U-8871, Opinion and Order, January 31, 1989, p. 97.

³⁰ Id., p. 4, citing MRE 608(a) and MRE 613(b).

³¹ Id., p. 5.

³² Id., citing Comings direct testimony, p. 18.

Consumers asserts that a party who has “opened the door” to testimony adduced by the opposing party may not object to that testimony as inadmissible.³³

In *People v. Utter*, 217 Mich 74, 83, 185 N.W. 830 (1921)(“*Utter*”), the Michigan Supreme Court broadly defined rebuttal evidence “as that given by one party to contradict, repel, explain or disprove evidence produced by the other party, and tending directly to weaken or impeach the same.” Subsequently, in *Kirk, supra*, the Court of Appeals restated the *Utter* definition of rebuttal testimony.³⁴ The Commission has relied on *Utter* and *Kirk* in assessing the striking of rebuttal evidence of a similar nature as the rebuttal evidence at issue here.

In Case No. U-5732, relying on *Utter*, the Commission rejected Consumers’ appeal of the ALJ’s granting of the AG’s motion to strike portions of prefiled rebuttal testimony. Regarding Consumers’ contention that the stricken testimony rebuts the estimated year-end 1980 capital structure offered by the Staff by showing the actual year-end 1980 capital structure for Applicant, the Commission reasoned, in part, as follows:

Applicant is not attempting to contradict, repel, explain or disprove evidence produced by the other party, but is simply asking the Commission to consider new evidence of the actual 1980 capital structure on the premise that estimates are no longer appropriate where actual data exists. . . the testimony regarding the actual 1980 capital structure does not fit within the commonly understood definition of rebuttal evidence but instead constitutes an offer of new evidence to update Applicant's case.³⁵

³³ Id., citing *Donnelly v William R Johnston Mfg Co*, 227 Mich 376, 379; 198 NW 894 (1924).

³⁴ 147 Mich App at 345 (“The rule of rebuttal evidence is stated in *Utter*: ‘Rebuttal evidence is broadly defined as that given by one party to contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same.’”)

³⁵ Case No. U-5732, Order Denying Emergency Appeal, March 31, 1981, p. 4-5.

Similarly, regarding Consumers' second contention that the stricken testimony rebutted the Staff's use of a 10% short-term debt rate by showing what the rate was at the end of 1980 and by offering an alternative method of determining a reasonable short-term debt rate, the Commission reasoned, in part, as follows:

It is true that the proposed 14% figure contradicts the 10% figure proposed by the Staff, but it is also true that the proposed 14% figure contradicts the 10% figure presented by Applicant in its direct case and furthermore represents a change in Applicant's methodology from the use of a 1980 year-end estimate to the use of the simple average of two years. As defined by the courts, rebuttal evidence is that evidence which is offered to contradict the evidence presented by the other party. The scope of rebuttal evidence does not include the contradiction of a party's own direct case.³⁶

In Case No. U-8871, citing *Utter*, the Commission held that the ALJ properly struck the rebuttal testimony, reasoning that "the first part of Mr. Giffels' rebuttal fails to meet this standard; rather than contradicting evidence offered by opposing witnesses, it simply provides further explanations and examples supplementing his direct testimony."³⁷ In a related Order issued in the same case on the same date, citing *Kirk*, the Commission affirmed the striking of other testimony, reasoning, in part, "that this testimony is simply supplemental direct testimony" and that as noted by the ALJ, "it is not proper to allow rehabilitation of the direct case during rebuttal."³⁸

In a subsequent order in Case No. U-8871, cited in both the Motion and the Response, the Commission affirmed the striking of rebuttal testimony, reasoning in part as follows:

³⁶ Id., p. 6. Emphasis in original.

³⁷ Case No. U-8871, Opinion and Order Granting Application for Leave to Appeal but Denying Relief, October 13, 1988, p. 3.

³⁸ Case No. U-8871, Opinion and Order Granting Application for Leave to Appeal but Denying Relief, October 13, 1988, p. 5-6.

In the exercise of his discretion, the administrative law judge put all parties on notice as to the scope of rebuttal testimony. He specifically stated:

First of all, I would advise the parties to consider what rebuttal is and what it means . . . It should not be for the purpose of rehabilitating someone's direct case.

. . . .

The record supports his conclusion that Dr. Rosen's rebuttal testimony was merely rehabilitative of his direct testimony. Dr. Rosen incorporated other parties' information into his testimony and revised his original testimony.³⁹

Finally, in *Sullivan Industries v. Double Seal Glass*, 192 Mich App 333, 348-349, 480 N.W. 623 (1991), the Court of Appeals applied the same rebuttal definition to find the testimony there to be improper rebuttal, reasoning, in part, as follows:

Here, Huettner's testimony did not undermine the credibility or testimony of Norton's expert. Quite the contrary, Huettner's rebuttal testimony lent credibility to Norton's expert, because Huettner's testimony amounted to an admission that some of the criticisms made by Norton's expert were valid.

MEC asserts that the subject testimony and exhibits are improper rebuttal because they attempt to rehabilitate or supplement Consumers' direct case. This Ruling agrees. This Ruling finds Mr. Blumenstock's rebuttal testimony at issue together with his sponsored Exhibits A-202 and A-203 to be new evidence offered to update Consumers' case in favor of these two capital expenditures. In addition, Mr. Blumenstock's rebuttal testimony contradicts the values put forth in his direct testimony and includes a change in Consumers' methodology. Moreover, rather than contradict Mr. Comer's testimony, Mr. Blumenstock's rebuttal testimony included an admission that the criticisms Mr. Comings offered in his testimony were valid.

³⁹ Case No. U-8871, Opinion and Interim Order, January 31, 1989, p. 96-97.
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Regarding Consumers' assertion MEC may not object to Mr. Blumenstock's rebuttal because *Donnelly, supra*, holds that that a party who has "opened the door" to testimony adduced by the opposing party may not object to that testimony as inadmissible, this Ruling finds that Consumers mischaracterizes *Donnelly*. In that case, the Michigan Supreme Court rejected the defendant's objection to the plaintiff's testimony during trial because the defendant offered no objection to the admission of the testimony at trial, raising its objection for the first time on appeal.

We do not discuss questions not urged in the trial court and raised first in this court. . . . Defendant having opened the door to the testimony adduced by plaintiff, and it having been received without objection, it may not now be urged that such testimony was inadmissible, and that the trial judge ought not to have permitted the jury to consider it.⁴⁰

Here, even if Mr. Comings statement in his direct testimony can reasonably be considered to be the equivalent of "opening the door" by way of testimony offered before a jury at trial – which this Ruling considers doubtful – it is clear that MEC has timely objected to the challenged rebuttal testimony pursuant to its Motion.

Regarding MEC's assertion that the rebuttal testimony and exhibits should be struck as lacking foundation because Consumers has not produced the supporting calculations or otherwise provided access to the model for MEC to evaluate the new results, despite the supplemental filings by MEC and Consumers regarding the discovery requested and provided, it is unclear whether Consumers failed to produce the information requested. Thus, this Ruling finds that MEC's assertion that this evidence should be struck for a lack of foundation is unsupported.

⁴⁰ 227 Mich at 379.
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Accordingly, the Motion is GRANTED, and the portions of Mr. Blumenstock's rebuttal testimony as marked up in Attachment 1 to the Motion, together with Exhibits A-202 and A-203 are stricken from the record.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

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Jonathan F. Thoits
Administrative Law Judge

November 7, 2025
Lansing, Michigan

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN)
) SS. Case No. U-21870
County of Ingham)
_____)

PROOF OF SERVICE

Meaghan Dobie being duly sworn, deposes and says that on November 7, 2025, she served a copy of the attached Ruling on Motion to Strike via email and/or first-class mail, to the persons as shown on the attached service list.



Meaghan Dobie

Subscribed and sworn to before me this
7th day of November 2025.



Brianna L. Brown
Notary Public, Gratiot County, Michigan
My Commission Expires July 4, 2028

Case No. U-21870
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