



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

December 5, 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-21870

Dear Ms. Felice:

Please find enclosed the Initial Brief of Urban Core Collective, along with proof of service for electronic filing in the above-referenced matter.

Please do not hesitate to contact my office with any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark N. Templeton'.

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xc: Parties to Case No. U-21870

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.

Case No. U-21870

ALJ Jonathan F. Thoits

**INITIAL BRIEF OF  
URBAN CORE COLLECTIVE**

December 5, 2025

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## I. INTRODUCTION

Consumers Energy Company (“Consumers Energy,” “Consumers,” or “the Company”) requests that the Michigan Public Service Commission (“MPSC” or “the Commission”) grant the Company \$436 million in annual rate relief, as well as an additional \$24.3 million to account for a distribution deferral.<sup>1</sup> It is also asking for a \$352,280,000<sup>2</sup> modification to the two-year Distribution Investment Recovery Mechanism (“IRM”) and asking to extend the IRM by two years, from May 1, 2026<sup>3</sup> to April 30, 2028.<sup>4</sup> If the requested rate increase component is authorized, residential customers would see an average monthly rate increase of approximately \$14.<sup>5</sup>

The requested rate increase would increase energy unaffordability at a time when ratepayers are already struggling to pay their electric bills. At the same time, the Company has not sufficiently considered the particular concerns and needs of Consumers’ low- and moderate-income (LMI) and Black, Indigenous, and People of Color (BIPOC) customers.

Urban Core Collective (“UCC”)<sup>6</sup> intervened in this proceeding as an advocate for the ratepayers that would be most severely impacted by the Company’s proposals: low-income and BIPOC communities. In this initial brief, UCC details the following issues:

**A. Affordability:** Consumers’ requested rate increase will exacerbate the affordability crisis in its service territory. Thirty-seven percent of Consumers customers are either in crisis and unable to afford their energy bill or one crisis away from being able to afford their energy bill.<sup>7</sup>

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<sup>1</sup> Consumers Energy Application at 12.

<sup>2</sup> Myers Direct Testimony at 3 TR 1829, tbl. 2 (IRM Expenditures).

<sup>3</sup> *Id.* at 3 TR 1829.

<sup>4</sup> Kelly Direct Testimony at 3 TR 1472.

<sup>5</sup> Connolly Direct Testimony at 3 TR 157.

<sup>6</sup> Urban Core Collective is a community organization which was founded with the goal of overcoming the effects of systemic racism by promoting equal access to education, economic prosperity, health, power, and influence.

<sup>7</sup> Byrom Direct Testimony at 3 TR 967.28–29.

Many of Consumers' customers are already struggling to meet basic needs such as food, healthcare, and housing, and many have to choose between paying their energy bills and affording basic necessities. Consumers' proposed rate increase would increase residential rates by eleven percent on average, which is more than double the 4.5% net revenue increase that the Commission approved in last year's Consumers Energy Rate Case No. U-21585 for the residential customer class.<sup>8</sup> For many customers already affected by the affordability crisis in Consumers' territory, the requested rate increase would be a significant financial burden.

Furthermore, the Company has failed to provide adequate assistance through its current payment assistance programs, which include the Low-Income Assistance ("LIA") credit, the Residential Income Assistance ("RIA") credit, and the CARE Modified Budget ("CARE MB") Program. The programs have failed to deliver affordable energy burdens of six percent of income for all energy, including electricity and gas. Consumers' proposed rate increase will only make these programs less effective, as the assistance from these programs does not generally increase in proportion to the Company's rate increase, does not reach all customers who are in need of or eligible for assistance, and does not provide them with all the assistance they need.

To address the inadequacy of Consumers' current assistance programs, UCC recommends that the Commission order Consumers Energy to adopt a Percentage of Income Payment Plan ("PIPP") program. As evidenced by the Company's PIPP pilot program, a PIPP performs better than the Company's current assistance programs across a wide range of metrics. Most importantly, a PIPP program drastically reduces energy burden for those enrolled, ensuring that their utility bills are affordable. The Commission must consider the PIPP program in the instant case, as the Commission legally cannot adequately assess whether the Company's rates are "just and

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<sup>8</sup> Myers Direct Testimony at 3 TR 1808.

reasonable” without assessing the affordability of the proposed rates. The Commission should approve moderate changes to the LIA credit proposed by the Company in the meantime. Furthermore, the Commission should order the Company to conduct an affordability analysis in conjunction with future rate case proposals, addressing how the Company’s current and proposed rates fit with the Commission’s definition of energy affordability. The Commission should limit the requested rate increase to the greatest extent possible.

Finally, under Michigan law, the Commission must consider affordability in rate cases, and a sufficient evaluation of affordability on this record will reveal that a rate increase in this case would be unjust and unreasonable. Under MCL § 460.557, the Commission must set rates that are both “just and reasonable.”<sup>9</sup> In addition to this statutory requirement, Michigan courts have established that the Commission must complete a “comprehensive examination of all factors involved.”<sup>10</sup> The Commission is legally obligated to consider and address affordability issues.

**B. Reliability:** The Company has failed to provide adequately reliable service to its customers. According to independent audits, Consumers' service reliability consistently falls below acceptable standards regarding outages. These unreliable services are insufficient in two respects: First, they impose severe and compounded costs on vulnerable customers, including life-threatening medical risks, financial burdens, and exposure to dangerous temperatures. Second, the Company’s outage credit system fails to adequately compensate customers for losses. To address the inadequacy of Consumers' service reliability, UCC recommends that the Commission order the Company to (1) proactively notify all customers of their right to receive outage credits and provide explanations of how credits are calculated; and (2) revisit the amount paid as outage credits, to more closely align with the outage-related costs incurred by customers.

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<sup>9</sup> MCL § 460.557(4).

<sup>10</sup> *Twp. of Meridian v. City of E. Lansing*, 342 Mich. 734, 749 (Mich. Sup. Ct. 1955).

C. **Shutoff Practices:** Beyond unreliable service, the Company has also failed to address shutoff practices that disproportionately impact minority customers. Consumers' own regression analysis revealed statistically significant racial disparities in shutoff rates that cannot be explained by economic factors alone. These discriminatory practices violate the legal requirement that rates and service be "just and reasonable" under MCL § 460.557, as racial disparities in service provision are inherently unreasonable. To address these discriminatory practices, UCC recommends that the Commission order Consumers to implement a shutoff moratorium until the Company identifies the root causes of racial disparities and adopts corrective measures to eliminate discriminatory outcomes.

D. **Environmental Justice:** Consumers Energy's failure to adequately address affordability and reliability issues has disproportionately impacted Environmental Justice (EJ) communities. The Company's current regression analysis of reliability in EJ is lacking in certain parts. While Consumers' Vulnerable Communities Resiliency Plan (VCRP) is an important start to address reliability inequities in EJ communities, it has been slow to ramp up, does not yet provide sufficient detail for meaningful stakeholder input, and should have better performance metrics for the Commission to conduct meaningful oversight. The Commission should require the Company to supplement its current regression analysis with a like-versus-like analysis, comparing urban EJ communities to urban non-EJ communities and rural EJ communities to rural non-EJ communities. The Commission should also require the Company to provide a ten-year plan for the VCRP's implementation, with an accelerated timeline, opportunities for stakeholder engagement, and more tailored performance metrics.

In addition, Consumers should also do more to facilitate the deployment of distributed energy resources (DERs) in EJ communities, including community solar. EJ communities benefit

from DER deployment, including in energy affordability and reliability. Consumers has not made explicit commitments, though, to proactively update the grid in EJ communities to prepare for DER development. The Company should upgrade the grid to ensure that the benefits of DER deployment, including community solar, do not bypass EJ communities.

Furthermore, the Company should do more to protect customers from the health and safety risks posed by extreme weather events. Consumers' current extreme weather policies, which include suspending disconnections only when temperatures exceed 90°F on a single day and providing automatic enrollment to the Winter Protection Program only to some eligible customers, are insufficient. LMI households and EJ communities are particularly vulnerable to the impacts of extreme weather events, face higher energy burdens, reside in less energy-efficient housing, and are disconnected at disproportionate rates. These challenges are exacerbated by the Company's inadequate infrastructure, which will face increasing strains from extreme weather.

UCC recommends that the Commission order immediate protective measures in this case, including interim extreme heat policies that protect customers during summer months. Should the Commission choose to wait until the resolution of MPSC Case No. U-20140, the Commission should order an interim moratorium on disconnections during the summer months to protect customers until such improved policies are developed and implemented.

Lastly, Consumers Energy has failed to provide practical and functional public access to Geographic Information System ("GIS") data consistent with the Commission's Order in Case No. U-21389. Despite creating a public-facing GIS map and an online data request form, the current map is not user-friendly and does not enable intervenors or the public to understand or evaluate the Company's reliability performance, particularly in EJ communities. Because meaningful access to GIS data is essential for independent review and transparency, the Commission should

direct Consumers to improve the GIS map's interface and functionality by including clear keys and definitions, intuitive controls, and comparison features.

**E. Investment Recovery Mechanism Modification:** In the instant rate case, the Company seeks to extend the current Distribution Investment Recovery Mechanism (IRM) by two years and proposes more than \$352 million in additional expenditures. However, the Company overspent overall, underspent in particular areas, and did not follow its timeline for Year 1 expenditures for the current IRM. In addition, the Company has not provided enough information to comply with the Commission's order in Case No. U-21389 that the Company provide evidence about whether its investments are leading to equitable results.

To address the variances between the Company's proposed and actual execution of Year 1 of the current IRM, and to ensure that investments are addressing equity concerns and benefitting customers, the Commission should track the reconciliation process in U-21918, ensure that unspent IRM funds are returned to ratepayers in compliance with the Commission's Order in U-21585, and mandate quarterly reporting on project completion rates, spending versus budget, and equity outcomes in any extended IRM going forward. Doing so is necessary to ensure accountability and transparency of the IRM, especially with regard to investments targeted to EJ communities.

**F. Customer and Community Engagement:** The Company has not engaged sufficiently with LMI customers and EJ communities on issues of affordability and reliability. The Company's current efforts are insufficient in two ways. First, they do not constitute genuine community engagement that builds lasting relationships and addresses collective concerns. Second, they do not address—and sometimes even erect—create barriers for the most vulnerable customers, including elderly residents, people with disabilities, non-English speakers, and those

without reliable internet access, to access important information. The Company's initiatives, including the LMI Customer Support Enhancement Project, demonstrate a laudable effort towards meaningful customer engagement that would be valuable if they lead to increased enrollments in affordability programs. However, the Company has not yet shown that these programs and investments have delivered or will deliver measurable benefits to vulnerable customers.

To address the inadequacy of the Company's current engagement practices, UCC recommends that the Commission require transparent reporting and accountability measures. Additionally, UCC recommends that the Commission require the Company to work with environmental justice organizations in engaging with the community.

**G. Corporate Memberships:** The Company has failed to provide adequate justification for recovering \$830,705 in corporate membership dues and fees from ratepayers. The Company's request for recovery is deficient in two substantial respects. First, Consumers has failed to provide sufficiently detailed and tangible examples of how these dues and fees specifically benefit ratepayers. Second, several of these memberships, particularly the Edison Electric Institute (EEI), fund advocacy activities that are demonstrably contrary to ratepayer interests. Forcing captive ratepayers to subsidize this advocacy violates the U.S. Constitution's First Amendment's prohibition against compelled speech.

To address the inadequacy and constitutional concerns of Consumers' corporate membership recovery request, UCC recommends that the Commission (1) disallow the entire \$830,705 in corporate membership dues, or at minimum disallow all EEI membership costs excepting a \$15,000 mutual assistance program; (2) require itemized membership disclosures in future rate cases consistent with disclosure standards established for another utility, DTE Electric; and (3) establish a concrete standard barring recovery where trade associations dedicate significant

resources to political advocacy contrary to customer interests, applicable to all utilities under Commission jurisdiction. Recovery of these costs, and thereby passing on costs to ratepayers, would not be “just and reasonable.”

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## II. LEGAL STANDARD

MCL § 460.557, which provides the statutory basis for the Company’s requested rate change, makes clear that an electric utility’s rates shall be “just and reasonable.”<sup>11</sup> Consumers Energy, as the party seeking Commission action, bears the burden of proof that its requests are just and reasonable by a preponderance of the evidence.<sup>12</sup> In determining whether a rate is “just and reasonable,” Michigan statutory law directs the Commission to “consider and give due weight to all lawful elements necessary to determine the price fixed for supplying electricity,” including both the “value of service to the consumer” and a “reasonable return on the fair value of all property used in the service....”<sup>13</sup> Michigan law further instructs that “a consumer shall not be charged more or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions,” meaning that rates must be the same for similar customers in similar circumstances.<sup>14</sup>

The Supreme Court of Michigan has established that the determination of a reasonable rate “depends upon a comprehensive examination of all factors involved.”<sup>15</sup> The court has stated that the Commission has a duty to “balanc[e] the interest of public utility investors and the consuming public” in setting “a just and reasonable rate.”<sup>16</sup> Further, the court has expressed that the Commission may protect a utility’s consumers from “unnecessary burdens,” holding that the Commission has the “authority to exclude [excess profits] from public utility operating

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<sup>11</sup> MCL § 460.557.

<sup>12</sup> *See In re Consumers Energy Co.*, MPSC Case No. U-19322, Order (Mar. 28, 2018) at 6–7.

<sup>13</sup> MCL § 460.557(2).

<sup>14</sup> MCL § 460.557(4).

<sup>15</sup> *Twp. of Meridian v. City of E. Lansing*, 342 Mich. 734, 749 (1955).

<sup>16</sup> *City of Detroit v. Mich. Pub. Serv. Comm’n*, 308 Mich. 706, 716 (1944).

expenses.”<sup>17</sup> In sum, the Commission must “balance investor and public interests” in determining just and reasonable rates.<sup>18</sup>

In *Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia*, the U.S. Supreme Court defined constitutional bounds of the rates to which public utilities are entitled, clarifying that public utilities are only entitled to a “reasonably sufficient” return on investment.<sup>19</sup> The Supreme Court explained the following:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time . . . on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.<sup>20</sup>

As a result, public utilities are constitutionally limited in the rates they can charge.<sup>21</sup>

Further, both the U.S. Supreme Court and the Supreme Court of Michigan have established that state public utility commissions have significant discretion in setting rates.<sup>22</sup> In *Duquesne Light Company v. Barasch*, the U.S. Supreme Court stated that “[t]he guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public,” that is so low that it is “confiscatory.”<sup>23</sup> The Court then clarified that as long as a rate

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<sup>17</sup> *City of Detroit*, 308 Mich. at 716.

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

<sup>19</sup> 262 U.S. 679, 693 (1923) (stating that a “return should be reasonably sufficient to assure confidence in the financial soundness of the utility” and that “[a] rate of return may be reasonable at one time and become too high or too low by changes affecting opportunity for investment, the money market and business conditions generally”).

<sup>20</sup> *Id.* at 679, 692–93 (1923).

<sup>21</sup> *Id.* at 692–93.

<sup>22</sup> *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307–10 (1989); *Ass’n of Businesses Advocating Tariff Equity v. Pub. Serv. Comm’n*, 208 Mich. App. 248, 259 (Mich. Ct. App. 1994).

<sup>23</sup> *Duquesne Light Co.*, 488 U.S. at 307; *Ass’n of Businesses Advocating Tariff Equity*, 208 Mich. App. at 269 (citing *Duquesne*).

proposed by a utility commission does not “jeopardize the financial integrity of the [utility], either by leaving [it] insufficient operating capital or by impeding [its] ability to raise future capital,” or is not “inadequate to compensate current equity holders for their risk,” such a proposed rate is constitutional.<sup>24</sup> Similarly, the Supreme Court of Michigan stated in *Association of Businesses Advocating Tariff Equity v. Public Service Commission* that the Michigan Public Service Commission has “broad discretion” in determining rates and that the Commission should allow a utility to “recover its prudent investment.”<sup>25</sup>

In past rate cases, the Commission has used its discretion to require that utilities provide information supporting their rate proposals to aid the Commission’s reasonableness determination. Michigan law requires utilities to disclose as evidence the facts on which they rely in producing rate proposals.<sup>26</sup> The Commission has interpreted this statutory provision to mean that the Company must provide “thorough, detailed, and meaningful evidence” that “costs are just and reasonable” for the Commission to approve the Company’s proposed rate.<sup>27</sup> Otherwise, the Commission’s “hands are tied,” and the Commission cannot find the proposed costs to be just and reasonable.<sup>28</sup>

Furthermore, in approving distribution system investment plans, the Commission has rejected “high-level” plans that are not “holistic” or “detailed,” instead requiring “comprehensive,

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<sup>24</sup> *Duquesne Light Co.*, 488 U.S. at 312.

<sup>25</sup> *Ass’n of Businesses Advocating Tariff Equity*, 208 Mich. App. at 259, 266. The court also stated that by approving the utility’s rate at issue in this case, the Commission “merely permitted [the utility] to recover its prudent investment” and asserting that “[t]his Court is not persuaded that the rate relief provided in this case was unreasonable.” *Id.* at 267–68.

<sup>26</sup> MCL § 460.6a(1).

<sup>27</sup> *In re Consumers Energy Co.*, MPSC Case No. U-16794, Order (June 7, 2012), at 13.

<sup>28</sup> *Id.*

forward-looking” plans.<sup>29</sup> Such plans should provide a “clear strategic path to address resilience, reliability, and grid modernization.”<sup>30</sup>

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<sup>29</sup> See *In re DTE Electric Co.*, MPSC Case No. U-18014, Order (Jan. 31, 2017), at 40.

<sup>30</sup> See U-18014 Notice of Opportunity of Comment (Aug. 3, 2017) at 2.

### III. ARGUMENT

#### A. Consumers Has Failed to Address Affordability Issues While Requesting a Rate Increase That Will Worsen the Current Affordability Crisis. (*Issue VIII. Customer Assistance Programs and Affordability*)<sup>31</sup>

There is an affordability crisis in Consumers' service territory. The proposed rate increase will worsen the existing crisis and increase harm to consumers, especially those who are members of low- and moderate-income (LMI) communities. Consumers has failed to provide sufficient

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<sup>31</sup> UCC believes the following are relevant for this issue:

Relevant Testimony: Breuring Direct Testimony at 3 TR 944; Cira-Reyes Direct Testimony at 3 TR 2293–322; Connolly Direct Testimony at 3 TR 157–58; Byrom Direct Testimony at 3 TR 967.24–.48; Byrom Rebuttal Testimony at 3 TR 967.61–.75; Myers Direct Testimony at 3 TR 1808–09, 1821–22, 1828–31; Myers Rebuttal Testimony at 3 TR 1848–49; Williams Direct Testimony at 3 TR 2373–2404; Coppola Direct Testimony at 3 TR 2417–2422, 2533–67; Lyon Direct Testimony at 3 TR 2602–17; Bulkley Direct Testimony at 4 TR 2717– 2790; Bulkley Rebuttal Testimony at 4 TR 2793–2916; Fitzhenry Direct Testimony at 6 TR 3731–3817; Walters Direct Testimony at 6 TR 3761–3765; Bandyk Direct Testimony at 6 TR 3944–78; Schiller Direct Testimony at 6 TR 4304–08; Braunschweig Rebuttal Testimony at 6 TR 4610–12.

Other Relevant Authorities: MCL § 460.557; MCL § 460.557(2); MCL § 460.557(4); MCL § 460.6a; MCL § 24.306(1); MCL 24.306(1)(e); MCL § 24.285; *In re Consumers Energy Co.*, MPSC Case No. U-21021, Notice of Filing: Energy Affordability Report (Sept. 10, 2025), at 2; *In re Consumers Energy Co.*, MPSC Case No. U-21021, Consumers Energy Company's Application for Ex Parte Approval of a Percent of Income Payment Plan Pilot (Mar. 9, 2021), at 2; *In re Consumers Energy Co.*, MPSC Case No. U-19322, Order (Mar. 28, 2018) at 6–7; *In re Consumers Energy Co.*, MPSC Case No. U-20757, Comments of the Attorney General and CUB (Oct. 30, 2025), at 16; *In re MPSC*, MPSC Case No. U-20757, Comments on MPSC Staff Energy Affordability Report by Michigan Environmental Council, Natural Resources Defense Council, Ecology Center, and Vote Solar (Oct. 30, 2025), at 13–14; *In re Response to the COVID-19 Pandemic*, MPSC Case No. U-20757, Report from Staff on activities of the EAAC (Dec. 26, 2024); *In re Response to COVID-19*, MPSC Case No. U-20757, Order (Dec. 21, 2023), at 36; *In re Consumers Energy Co.*, MPSC Case No. U-16794, Order (June 7, 2012) at 13; *In re DTE Electric Co.*, MPSC Case No. U-21534, Order (Jan. 23, 2025), at 460–61; *In re DTE Electric Co.*, MPSC Case No. U-18014, Notice of Opportunity of Comment (Aug. 3, 2017), at 2; *In re DTE Electric Co.*, MPSC Case No. U-18014, Order (Jan. 31, 2017) at 40; *In re DTE Gas Co.*, MPSC Case No. U-21291, Schott Direct Testimony (May 7, 2024), at 4 TR 1082; *In re Consumers Energy Co.*, MPSC Case No. U-20697, Colton Direct Testimony (June 24, 2020) at 8 TR 3698; *Twp. of Meridian v. City of E. Lansing*, 342 Mich. 734 (Mich. Sup. Ct. 1955); *City of Detroit v. Michigan Pub. Serv. Comm'n*, 308 Mich. 706 (1944); *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923); *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989); *Ass'n of Businesses Advocating Tariff Equity v. Pub. Serv. Comm'n*, 208 Mich. App. 248 (1994); *In re Application of Ind. Mich. Power Co. to Increase Rates*, 329 Mich. App. 397 (Mich. Ct. App. 2019); *In re Consumers Energy Co.*, 322 Mich. App. 480 (2017).

assistance to its most vulnerable customers to mitigate this crisis, and as a result, the proposed rate increase will cause further harm to customers who need the most support.

The Commission must take action to address Consumers' worsening affordability crisis. First, the Commission should order Consumers to implement a full Percentage of Income Payment Plan (PIPP) to ensure that customers have an affordable energy burden. Second, the Commission should order Consumers to produce regular affordability analyses based on the Commission's definition of energy affordability. In the instant case, the Commission should also aim to limit the rate increase as much as possible, in order to protect vulnerable customers in Consumers' service territory.

### **1. Consumers Energy's Proposed Rate Increase Will Only Worsen the Affordability Crisis in Consumers Energy's Service Territory.**

The affordability crisis is evident in the high percentages of household budgets that many customers must spend to pay their energy bills. A household's energy burden is defined as the percentage of the household's budget spent on energy bills. An affordable energy burden is 6% of a household's income for all energy utilities (gas and electric).<sup>32</sup> MPSC Staff have affirmed this in their recent Affordability Report: "Staff concurs and recommends that an energy burden threshold be no greater than 6% of total household income."<sup>33</sup> While the median energy burden for all U.S. households is estimated to be around 2.9%,<sup>34</sup> "25% of all low-income households in the United States have an energy burden above 15.2%."<sup>35</sup> LMI households often struggle with exceptionally

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<sup>32</sup> See Ex. UCC-5, APPLIED PUB. POL'Y RSCH. INST. FOR STUDY AND EVALUATION (APPRISE), RATEPAYER-FUNDED LOW-INCOME ENERGY PROGRAMS: PERFORMANCE AND POSSIBILITIES (2007), at 8.

<sup>33</sup> Ex. UCC-202, MPSC Staff, *Energy Affordability Report*, MICH. PUB. SERV. COMM'N (Sep. 10, 2025), at 89.

<sup>34</sup> Ex. UCC-6, AMERICAN COUNCIL FOR AN ENERGY-EFFICIENT ECONOMY (ACEEE), DATA UPDATE: CITY ENERGY BURDENS (2024) at 8.

<sup>35</sup> *Id.* at 1.

high energy burdens. While the median energy burden for U.S. households is around 2.9%, as stated above, the median energy burden for low-income households is almost triple the overall median at 8.3%.<sup>36</sup>

This phenomenon also exists for Consumers' customers. UCC Witness Williams stated in her direct testimony that her monthly combined bill for gas and electricity from Consumers ranges from \$200 to \$350, which represents about 38% of her income.<sup>37</sup> This is more than six times the generally accepted percentage of income, 6%, that is considered affordable to spend on energy bills.<sup>38</sup> Additionally, MPSC Staff highlighted in their Energy Affordability Report that, based on the DTE and Consumers Energy PIPP Reports, "[t]here are many customers who will forego necessities like food and medicine to pay their bills."<sup>39</sup> "28% of Michigan households fall within the ALICE category,"<sup>40</sup> which is defined as households that "struggle to afford basic necessities like housing, childcare, food, transportation, health care, and technology."<sup>41</sup>

Customers who struggle to pay their electricity bills make difficult choices that can have severe consequences. Because they face such high energy burdens, these low-income households are forced "to choose between basic needs like heating their homes and buying groceries."<sup>42</sup> A recent U.S. Census Bureau Household Pulse Survey showed that 51% of households with an

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<sup>36</sup> *Id.* at 8, line 1, column 3.

<sup>37</sup> Williams Direct Testimony at 3 TR 2380–81.

<sup>38</sup> Ex. UCC-5, APPLIED PUB. POL'Y RSCH. INST. FOR STUDY AND EVALUATION (APPRISE), RATEPAYER-FUNDED LOW-INCOME ENERGY PROGRAMS: PERFORMANCE AND POSSIBILITIES (2007), at 8.

<sup>39</sup> Ex. UCC-202, MPSC Staff, *Energy Affordability Report*, MICH. PUB. SERV. COMM'N (Sep. 10, 2025), at 211.

<sup>40</sup> Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 79.

<sup>41</sup> *Id.* at 89.

<sup>42</sup> Williams Direct Testimony at 3 TR 2374.

annual income under \$50,000 report “foregoing basic necessities for at least a month each year to be able to afford energy bills and prevent shutoffs.”<sup>43</sup>

Again, what is true in our country is also true in Consumers’ territory. UCC Witnesses Williams and Cira-Reyes describe seeing ratepayers in their communities having to choose between buying basic necessities like food and medicine or paying their electricity bills because the bills are so unaffordable.<sup>44</sup> As a result of facing larger energy burdens compared to higher-income households, LMI households also suffer increased negative economic and health repercussions.<sup>45</sup> Witness Cira-Reyes described seeing such repercussions in his community, “with households having to choose among paying bills on time, keeping houses at healthy temperatures, and paying for basic necessities, such as food or medicine.”<sup>46</sup> Witness Cira-Reyes also called out a public comment in the instant case, where a Consumers’ customer stated that “[a]s someone on a fixed income . . . I have to set the thermostat at an uncomfortable temperature” to be able to afford electricity.<sup>47</sup> The customer continued, “I avoid using my electric stove, or my electric clothes dryer,” and “only ta[k]e cool showers twice a week so my water heater doesn’t run. Nobody with a disability should have to live like this.”<sup>48</sup> Some of Consumers’ customers are already living in unaffordable and burdened situations that require them to choose between basic needs and necessities.

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<sup>43</sup> Cira-Reyes Direct Testimony at 3 TR 2295 (citing Ex. UCC-8, MARK WOLFE ET AL., CTR. FOR ENERGY POVERTY AND CLIMATE (CEPC), AMERICA NEEDS A PARADIGM SHIFT IN HOW THE NATION RESPONDS TO EXTREME HEAT (2024) at 3).

<sup>44</sup> Cira-Reyes Testimony at 3 TR 2295; Williams Direct Testimony at 3 TR 2382–83.

<sup>45</sup> See generally Ex. UCC-7, *Study: One in Four Low-Income Households Spend Over 15% of Income on Energy Bills*, AM. COUNCIL FOR AN ENERGY-EFFICIENT ECON. (Sep. 11, 2024) at 2.

<sup>46</sup> Cira-Reyes Direct Testimony at 3 TR 2295.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

By the Commission’s own definition of affordability, Consumers’ rates are unaffordable to customers. The Commission’s definition of energy affordability is “[t]he extent to which a household has the resources to meet their home energy needs for heating, cooling and other uses in a healthy, sustainable and energy efficient manner without compromising a household’s ability to meet other basic needs.”<sup>49</sup> Yet, Consumers’ rates demonstrably compromise customers’ ability to meet their basic needs. As Witness Williams stated, in Consumers’ service territory, “[h]igh energy prices and constant rate increases force families to choose between basic needs”<sup>50</sup> and that Witness Williams “regularly help[s] families who are behind on their bills, facing shutoffs, and making impossible choices between utilities and other basic needs like food and medicine.”<sup>51</sup> In its Affordability Report, the MPSC Staff acknowledged the negative impacts of falling into an energy crisis, “even when assistance is available to resolve that crisis,” including “behavioral impacts such as forgoing food, medication, or other essential needs to manage an unaffordable energy payment” and “keeping a home at unhealthy temperatures to limit energy use,” as well as the “psychological and emotional stress caused by unmet basic needs.”<sup>52</sup>

Communities of color also face disproportionate harm from the affordability crisis in general and in Michigan specifically. Black, Indigenous, and People of Color (BIPOC) communities usually account for a higher percentage of LMI communities than of communities that are not LMI.<sup>53</sup> Michigan unemployment statistics also show that unemployment rates are

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<sup>49</sup> *In re Response to COVID-19*, MPSC Case No. U-20757, Order (Dec. 21, 2023), at 36.

<sup>50</sup> Williams Direct Testimony at 3 TR 2374.

<sup>51</sup> *Id.* at 3 TR 2401.

<sup>52</sup> Ex. UCC-202, MPSC Staff, *Energy Affordability Report*, MICH. PUB. SERV. COMM’N (Sep. 10, 2025), at 134.

<sup>53</sup> See generally Ex. UCC-13, Kyle Ross & Justin Dorazio, *The Latest Poverty, Income, and Food Insecurity Data Reveal Continuing Racial Disparities*, CTR. FOR AM. PROGRESS (Dec. 21, 2022); Ex. UCC-7, *Study: One in Four Low-Income Households Spend Over 15% of Income on Energy Bills*, AM. COUNCIL FOR AN ENERGY-EFFICIENT ECON. (Sep. 11, 2024).

higher among Black workers than among White workers,<sup>54</sup> making BIPOC populations less able to afford everyday expenses, including energy, and BIPOC ratepayers often live in less energy-efficient housing,<sup>55</sup> causing them to pay more money for energy per square foot than the average cost across the United States.<sup>56</sup> Witness Cira-Reyes recounted that “[d]ata from 2020 shows that Black households were billed, on average, \$1.21 per square foot and Hispanic/Latino households were billed \$1.16 per square foot, while White households were billed at \$1.02 per square foot.”<sup>57</sup>

The Company recognizes there is an affordability problem, despite claims that it cannot calculate its customers’ energy burdens. In direct testimony, Witness Byrom stated that “LMI customers account for more than 1 of every 3 customers in Consumers Energy’s service territory; 11% are low income, meaning they are in crisis and unable to pay their energy bill; 26% are moderate income, commonly identified as being one crisis away from being able to pay their energy bill.”<sup>58</sup> Witness Byrom further referred to this latter category as “payment challenged.”<sup>59</sup> The Company classifies customers as, among other categories, “won’t pay” (defined as “frequently late; has multiple late payments or open invoices”) and “can’t pay” (defined as “has moderate on-time payment behavior (at least 50%)”).<sup>60</sup> This indicates an awareness that some of their customers

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<sup>54</sup> Ex. UCC-14, KRYSTAL JONES ET AL., MICH. CTR. FOR DATA AND ANALYTICS, MICHIGAN ECONOMIC ANALYSIS REPORT (2024) at 11.

<sup>55</sup> Ex. UCC-6, AMERICAN COUNCIL FOR AN ENERGY-EFFICIENT ECONOMY (ACEEE), DATA UPDATE: CITY ENERGY BURDENS (2024) at 2.

<sup>56</sup> Ex. UCC-12, Ross Beall & Carolyn Hronis, *U.S. Energy Insecure Households Were Billed More for Energy Than Other Households*, U.S. ENERGY INFO. ADMIN. (May 30, 2023) at 2.

<sup>57</sup> Cira-Reyes Direct at 3 TR 2297 (citing Ex. UCC-12 at 2).

<sup>58</sup> Byrom Direct Testimony at 3 TR 967.28–29.

<sup>59</sup> *Id.* at 3 TR 967.38.

<sup>60</sup> Cira-Reyes Direct Testimony at 3 TR 2315 (citing Ex. UCC-43, Consumer Energy Company’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0233\_Byrom\_ATT\_1, at 4; Ex. UCC-44, Consumers Energy’s Response to UCC’s Second Discovery Request, U21870-UCC-CE-0369, at 1).

cannot pay or are financially struggling, even if the Company claims that it cannot calculate customers' energy burdens.”<sup>61</sup>

Despite the Company's knowledge that vulnerable customers face significant challenges in paying their already high bills, the Company nonetheless proceeds with asking for a rate increase that would impose further unreasonably harsh burdens on ratepayers without offering meaningful long-term affordability solutions. Consumers seeks an 11% rate increase, raising the average monthly residential bill from \$132 to \$146.<sup>62</sup> This requested increase is more than double the 4.5% net revenue increase that the Commission approved in last year's Consumers Energy Rate Case No. U-21585 for the residential customer class.<sup>63</sup> Given that many customers are already struggling to afford their electricity bills, choosing between paying for electricity and basic necessities,<sup>64</sup> granting Consumers' requested rate increase would have significant negative impacts on the 11% of low-income customers and 26% moderate-income customers, as identified by the Company, and likely many others as well. As will be discussed in further detail below, the Company agrees that more support is needed for LMI customers,<sup>65</sup> but it refuses to acknowledge its role in creating the affordability problem, to restructure payment programs that provide too few people too little

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<sup>61</sup> Byrom Rebuttal Testimony at 3 TR 967.71 (“Consumers Energy does not directly validate income or gather household and income data from customers,” so “the Company does not have an accurate method for calculating customers' energy burden.”); Cira-Reyes Direct Testimony at 3 TR 2314–15 (stating that the Company “does not have plans to conduct an affordability analysis incorporating the details included in the Commission's definition of affordability”).

<sup>62</sup> Connolly Direct Testimony at 3 TR 157; Cira-Reyes Direct Testimony at 3 TR 2305.

<sup>63</sup> Myers Direct Testimony at 3 TR 1808.

<sup>64</sup> *See* Cira-Reyes Direct Testimony at 3 TR 2295 (stating that he has seen households in his community “having to choose among paying bills on time, keeping houses at healthy temperatures, and paying for basic necessities such as food or medicine”); Williams Direct Testimony at 3 TR 2382 (stating she has seen “people staying in relationships or in other harmful situations, making that sacrifice to make sure that they can afford to provide their children with basic necessities such as heating, cooling, medical necessities, and refrigeration”).

<sup>65</sup> Byrom Direct Testimony, 3 TR 967.26–29 (discussing Consumers' request for \$1.87 million to support the Low Moderate Income Customer Support Enhancement project and proposal to increase the Low-Income Assistance (LIA) Credit).

assistance, or to provide comprehensive alternatives to the existing flawed programs. For all of these reasons, the Commission should scrutinize the Company's request and limit the rate increase to the greatest extent possible.

**2. The Company's Existing Bill Assistance Programs Do Not Sufficiently Mitigate the Harms of Consumers Energy's High Rates or Adequately Address the Affordability Crisis.**

The Company's current payment assistance programs do not adequately address the affordability crisis experienced by Consumers' customers.<sup>66</sup> Consumers' current payment assistance offerings do not serve all eligible customers, and even for those who are enrolled, they do not provide enough assistance to make energy truly affordable for most customers in many Federal Poverty Level (FPL) income brackets.<sup>67</sup> As MPSC Staff has noted, "Consumers Energy's traditional and modified APPs [Affordable Payment Plans] produce inequitable outcomes within and across FPL income tiers."<sup>68</sup> In addition, the complex interactions of the programs can lead to perverse outcomes.<sup>69</sup> More generally, customers do not have all of the information that they need to know how to navigate these programs and find them hard to navigate.<sup>70</sup> Despite the Company's claims to the contrary, the adoption of a percentage of income payment plan (PIPP) program would more effectively address the affordability crisis experienced by Consumers' customers,<sup>71</sup> and the Commission should order Consumers to propose and adopt one.

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<sup>66</sup> Cira-Reyes Direct Testimony at 2 TR 1782; *see* Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025) at 107.

<sup>67</sup> Cira-Reyes Direct Testimony, at 2 TR 1789.

<sup>68</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025) at 117.

<sup>69</sup> Cira-Reyes Direct Testimony, at 3 TR 2312–13.

<sup>70</sup> *See* Byrom Direct Testimony at 3 TR 967.34 ("Research findings revealed that 18% of LMI customers were unaware of how to access help, 36% were unaware they qualify for programs, 25% perceived the process as overly complex and time-consuming, 51% felt too overwhelmed to take on another project, 21% considered EWR programs to be price-prohibitive, and 46% were unfamiliar with utility assistance for low-income families.").

<sup>71</sup> *Id.* at 3 TR 2321.

**a. The Company's Current Bill Assistance Programs are Insufficient.**

The Company currently offers three bill assistance programs to customers who meet Consumers' eligibility standards: the Low-Income Assistance ("LIA") credit, the Residential Income Assistance ("RIA") credit, and the Consumers Affordable Resource for Energy ("CARE") Program.<sup>72</sup>

LIA: The LIA credit does not currently provide sufficient assistance, nor do a substantial number of eligible customers receive it. LIA is currently a \$30 electricity bill credit, given each month to a small number of customers (presently only 4,200).<sup>73</sup> In general, customers who receive Medicaid and/or have an income of below 150% of the Federal Poverty Level (FPL) are eligible for the LIA credit, though there are other eligibility thresholds.<sup>74</sup> The Company has proposed to increase the enrollment cap and the credit to 8,200 and \$55, respectively, by 2029, but this expansion would still amount to only 3.9% of the 135,000 customers eligible for the support actually receiving a LIA credit.<sup>75</sup>

RIA: The RIA credit also provides insufficient assistance to LMI customers. The RIA credit is much smaller than the LIA credit at \$8 per month towards electricity bills. About 83% of Consumers' customers who make 150% or less of the FPL receive a RIA credit.<sup>76</sup> To put this figure in perspective, the Company's proposed average residential customer rate increase from \$132 to \$146 would engulf the entire \$8 RIA credit.<sup>77</sup> MPSC Staff echoed this concern with regard to DTE

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<sup>72</sup> Meyers Direct Testimony at 3 TR 182.

<sup>73</sup> *Id.* at 2 TR 2308 (citing Ex. UCC-39, Consumer Energy Company's Response to UCC's First Discovery Request, U21870-UCC-CE-0239, at 2).

<sup>74</sup> *Id.* at 3 TR 2309 (citing Byrom Direct Testimony, at 3 TR 967.39).

<sup>75</sup> *Id.* at 3 TR 2308-09 (citing Ex. UCC-39, Consumer Energy Company's Response to UCC's First Discovery Request, U21870-UCC-CE-0239, at 2).

<sup>76</sup> *Id.* at 3 TR 2309 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025) at 62).

<sup>77</sup> *Id.* (citing Connolly Direct Testimony at 9).

Energy’s similar RIA credit, stating that a drawback of its RIA credit is that it “does not always increase proportionally to rate increases.”<sup>78</sup>

CARE: The CARE Modified Budget (“CARE MB”) program is Consumers’ primary Affordable Payment Plan (“APP”), replacing the previous “CARE Flat Rate” program. New enrollments in CARE Flat Rate ceased at the close of the 2024 fiscal year.<sup>79</sup> The state’s Michigan Energy Assistance Program (“MEAP”) funds CARE.<sup>80</sup> CARE MB is only available to customers who are at or below 150% of the FPL.<sup>81</sup> CARE MB provides program participants with enrollment in a twenty-four-month payment plan with reduced energy bills and arrears forgiveness of up to \$3,000.<sup>82</sup> The credit is calculated based on customers’ average monthly energy consumption and their income.<sup>83</sup> The CARE MB credit is subject to change after six, twelve, and eighteen months of the twenty-four-month period if the customer consumes at least \$5 less or more than the Company predicted originally.<sup>84</sup> The CARE MB program is designed to “encourage customers to manage their energy usage more efficiently.”<sup>85</sup> Customers are placed into income brackets and usage brackets in order to make the calculation of their monthly assistance. Income brackets are based on FPL tiers between 0% and 75% of the FPL, 76% to 110% of the FPL, and 111% to 150%

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<sup>78</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025) at 41.

<sup>79</sup> Cira-Reyes Direct Testimony, at 3 TR 2307–08 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 32).

<sup>80</sup> *Id.* at 3 TR 2307 (citing Byrom Direct Testimony at 3 TR 967.25).

<sup>81</sup> *Id.* at 3 TR 2308 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 34).

<sup>82</sup> *Id.* at 3 TR 2307–08 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 35).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 33.

of the FPL.<sup>86</sup> Usage tiers are split between greater and less than \$140 per month for electric-only service, or “high” and “low” usage.<sup>87</sup>

The structure of the CARE MB program has flaws and appears to perpetuate excessive energy burdens rather than reducing or eliminating them. For example, the tiers described above create significant differences in monthly credits available to consumers, particularly between those with high and low usage. For someone between 111% and 150% of the FPL, the difference in high and low usage tiers is a \$40.83 average monthly credit versus a \$5.00 average monthly credit.<sup>88</sup> More generally, MPSC Staff acknowledged in its 2025 Affordability Report that there are “disparate energy burden outcomes across tiers in the CARE and CARE MB programs.”<sup>89</sup> Comments from Michigan Environmental Council, Natural Resources Defense Council, Citizens Utility Board of Michigan, Ecology Center, and Vote Solar in MPSC Case No. U-21021 noted that due to these brackets, “participants with incomes at the top end of each range will receive a greater proportion of energy burden relief than those at the low end.”<sup>90</sup> This goes against the fundamental reason for assistance programs, which is to provide support for customers experiencing unaffordable energy rates. Given these structural flaws, CARE MB is therefore fundamentally inadequate as Consumers’ APP.

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<sup>86</sup> *Id.* at 36.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 35.

<sup>89</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025) at 100.

<sup>90</sup> Cira-Reyes Direct Testimony at 3 TR 2317 (citing Ex. UCC-46, MICH. ENV’T COUNCIL, NAT. RES. DEF. COUNCIL, CITIZENS UTIL. BD. OF MICH. ECOLOGY CTR. AND VOTE SOLAR, U-21021 COMMENTS ON DTE ELECTRIC COMPANY AND DTE GAS COMPANY AND CONSUMERS ENERGY COMPANY PIPP PILOTS (2025) at 14).

**b. Consumers' Assistance Programs Interact in a Complex, Nontransparent Manner That Can Yield Negative Outcomes to Enrolled Customers.**

Due to the complexity of the design and the interactions of multiple programs, as well as a seeming lack of attention from the Company, under certain circumstances the Company's implementation of the assistance programs can result in less aid being provided to individuals enrolled in multiple assistance programs than would be the case if they were enrolled in fewer programs. The goal of assistance programs, whether working in tandem or independently, should be to provide the greatest amount of assistance possible to the largest number of customers in need. However, there are times when the Company's commitment to reduce agency costs intersects with the structure of the three assistance programs—LIA, RIA, and CARE MB—and leads to less assistance being provided than it should.

For customers enrolled in multiple programs, the Company first utilizes LIA and RIA credits to reduce customers' average monthly electricity bills, which in turn reduces the MEAP-funded CARE MB credit offered to these customers.<sup>91</sup> In fact, the Company has stated that it prioritizes LIA enrollment for customers who are already enrolled in the CARE program, which is funded by the government, in order to “offset agency costs.”<sup>92</sup> The Company has also stated that “LIA credits are prioritized to ensure all CARE MB customers receive the credit. This ensures that the overall monthly payment obligation is reduced, which decreases the agency payment portion.”<sup>93</sup> As described above, CARE MB has a tiered structure, allocating substantially more funds to those with a monthly average electricity bill exceeding \$140 per month and allocating

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<sup>91</sup> *Id.* at 3 TR 2312 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025) at 66).

<sup>92</sup> *Id.* at 3 TR 2309 (citing Ex. UCC-39 Consumer Energy Company's Response to UCC's First Discovery Request, U21870-UCC-CE-0239, at 2).

<sup>93</sup> Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025) at 79–80.

significantly lower credits to those with a monthly average electricity bill of \$140 per month or less.<sup>94</sup> This means that, for households on the cusp, with a monthly average electricity bill of around \$140, a RIA or LIA credit may significantly reduce their CARE MB credit because it lowers their monthly bill below \$140, the cutoff between significantly higher and lower CARE MB credits.<sup>95</sup> This, of course, aligns with the Company’s goal to “offset agency costs,”<sup>96</sup> but it does not necessarily align with the goal of affordability.

While no set of bill assistance plans should make customers worse off when enrolled in multiple programs than they would be if they were only enrolled in one program, Consumers’ suite of assistance programs, however, has the potential to yield this perverse outcome. Take the following example given by Witness Cira-Reyes, of a customer who has a bill of \$145 per month and is between 0% and 75% of the FPL.<sup>97</sup> As previously stated, if a customer were to hypothetically be enrolled in CARE MB and receive RIA or LIA credits, then the RIA and LIA credits would be applied to the customer’s bill before their CARE MB credit is calculated.<sup>98</sup> If this customer were only enrolled in CARE MB, with their hypothetical electricity bill of \$145 per month, they would be eligible for an \$87.67 credit per month.<sup>99</sup> However, if the customer were enrolled in RIA as well as CARE MB, the customer would only be eligible for a CARE MB credit of \$16.08 per month.<sup>100</sup> This is because after the application of the \$8 RIA credit, their now \$137

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<sup>94</sup> *Id.* at 36.

<sup>95</sup> *Id.*

<sup>96</sup> Cira-Reyes Direct Testimony at 3 TR 2309 (citing Ex. UCC-39 Consumer Energy Company’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0239, at 2).

<sup>97</sup> *Id.* at 3 TR 2312–13.

<sup>98</sup> *Id.* at 3 TR 2312 (citing UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025) at 66).

<sup>99</sup> “[I]n a scenario in which the customer earns between 0% and 75% of the FPL, under CARE MB, customers who use more than \$140 per month on electricity receive \$87.67 off their bill each month.” Cira-Reyes Direct Testimony, at 3 TR 2313 (citing UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025) at 35–36).

<sup>100</sup> Cira-Reyes Direct Testimony at 3 TR 2312.

electric bill would only be eligible for the assistance associated with the “less than or equal to \$140 per month” tier in the CARE MB program, which provides \$16.08 per month to those who earn between 0% and 75% of the FPL.<sup>101</sup> In essence, despite qualifying for *multiple* assistance programs, the hypothetical customer’s bill became \$63.59 *more* expensive each month.

The Company wishes to maintain this inadequate practice. The Company recommends “maintaining the current trajectory of MEAP” as presently “linked with the LIA credit . . . [a]s . . . LIA credits are prioritized to ensure all CARE MB customers receive the credit” in order to “ensure[] that the overall monthly payment obligation is reduced, which decreases the agency payment portion.”<sup>102</sup> The Company attempts to justify the reduction in assistance resulting from the combination of LIA and CARE MB credits by stating that “[t]he intent of this strategy is to maximize MEAP funds to ensure more customers can be served by the agencies.”<sup>103</sup> While UCC agrees that the Company should attempt to serve as many customers as possible, it is important that the payment assistance programs provided by the Company result in energy burdens that are affordable for low and moderate-income customers. Alternative structures for assistance programs, such as the percentage of income payment program (PIPP) discussed below, do not have such stark “cut-off” cliffs based on energy usage and therefore do not carry this same potential impact to customers enrolled in multiple programs.

The Company failed to sufficiently address this hypothetical outcome in response to UCC’s testimony. In rebuttal testimony, Witness Byrom responded to Cira-Reyes’ hypothetical above, stating that:

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<sup>101</sup> *Id.* (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025) at 35–36).

<sup>102</sup> Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 79–80.

<sup>103</sup> *Id.* at 80.

The Company does not agree with this characterization of credit application. In this hypothetical scenario, the assistance credits in each case help lower the customer's energy bill, billed for energy they have used. The Company has many programs available to assist customers [to] lower their overall energy usage via [energy waste reduction] programs, [demand response], time of use rates, appliance recycling, participating in the green giving program (which also provides bill credits), and more. When added to the available assistance, a customer's bill is effectively less expensive per month.<sup>104</sup>

This response does not directly address the situation noted by UCC. UCC does not disagree that enrollment in multiple assistance programs can help lower bills. The contention is that, due to the intentional structure of CARE MB and implementation of additional LIA and RIA credits, there exists a possibility that customers could be worse off than if they were not enrolled in multiple programs. Affordability programs should not be structured in a way that creates this contrary outcome; rather, they should be structured to promote affordability for customers.

Fundamentally, the issue is that each program structure is complicated, the intersections and interactions of the programs are even more complex, and perverse outcomes can arise. If it is complicated for experts to understand these effects and how they occur, as shown by the testimony in this case, then it would be between much more difficult and impossible for a non-expert to do so when trying to navigate these programs.

**c. The Company's Affordability Efforts Suffer from a More General Set of Flaws and Challenges as Well.**

Right now, only one of every six low-moderate income ("LMI") customers in Consumers' territory is enrolled in at least one assistance program.<sup>105</sup> Compounding factors contribute to the low penetration of these assistance programs.

First, Consumers' CARE MB and credit assistance programs cap eligibility at an income level that is inconsistent with the reality of those who need assistance. Households with an income

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<sup>104</sup> Byrom Rebuttal Testimony at 3 TR 967.72.

<sup>105</sup> Byrom Direct Testimony at 3 TR 967.29.

at or above 150% of the Federal Poverty Level, which in Michigan is akin to \$48,225 per year for a family of four,<sup>106</sup> also struggle to pay their energy bills.<sup>107</sup> To give a rough sense of the number of people affected, in 2020, nearly 10% of Consumers Energy customers, or roughly 160,000 customers, were between 150% and 200% of the FPL, and of those 160,000 customers, only 5.3% experienced an affordable electricity cost burden of 3% or less.<sup>108</sup> As rates increase, these customers' risk of unaffordable energy burdens is likely increasing, and yet, existing LIA, RIA, and CARE MB programs are not available to them.<sup>109</sup>

In Rebuttal Testimony, Company Witness Byrom responded to this concern and stated that “[m]oderate income customers . . . may be insecure or without funds for one or more billing cycles due to emergencies, changes in employment, or increased cost of other commodities. The Company has recently expanded its assistance focus to include this moderate-income customer, focusing on energy efficiency and other methods of saving on their energy costs.”<sup>110</sup> The Company implies here, without providing much detail, that the proposed solution for customers who are energy insecure is to reduce their energy use, not to receive regular affirmative payment assistance. Witness Byrom's characterization also diminishes the severity of the issue. By stating that moderate-income customers might be insecure only at certain times, the Company ignores the fact that nearly 95% of these customers have an unaffordable energy burden at *all* times.<sup>111</sup>

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<sup>106</sup> Cira-Reyes Direct Testimony at 3 TR 2314 n. 102 (citing Ex. UCC-41, Federal Poverty Level (FPL), HEALTHCARE, at 1–2).

<sup>107</sup> *Id.* at 3 TR 2311.

<sup>108</sup> *Id.* at 3 TR 2311 n. 93 (citing *In re Consumers Energy Co.*, MPSC Case No. U-20697, Colton Direct Testimony (June 24, 2020) at 8 TR 3698).

<sup>109</sup> *Id.* at 3 TR 2311.

<sup>110</sup> Byrom Rebuttal Testimony at 3 TR 967.72–.73.

<sup>111</sup> Cira-Reyes Direct Testimony at 3 TR 2311 n. 93 (citing *In re Consumers Energy Co.*, MPSC Case No. U-20697, Colton Direct Testimony (June 24, 2020) at 8 TR 369).

While the Company sets eligibility for its SPP, or Shutoff Protection Plan, for customers at 200% of the Federal Poverty Level, SPP is not the primary APP. And in the instant case, the Company is requesting a change to expand SPP eligibility to those at 400% of the federal poverty level, in order to “better serve the needs of moderate-income customers” because “the moderate-income customer segment has limited access to assistance options.”<sup>112</sup> To provide support for a larger segment of customers in need, payment assistant plans are needed for customers in income brackets above 150% of the FPL. To the extent permissible by law and federal and state program limitations, Consumers should provide additional assistance to those whose incomes are above 150% of the FPL who have an unaffordable energy burden.

Second, customers lack sufficient information about Consumers Energy’s assistance programs. In its Direct Testimony, the Company noted that “18% of [its] LMI customers were unaware of how to access help, 36% were unaware they qualify for programs, 25% perceived the process as overly complex and time-consuming . . . and 46% were unfamiliar with utility assistance for low-income families.”<sup>113</sup> UCC Witness Tabitha Williams’ experience underscores these statistics. She stated that she often has trouble accessing information about Consumers’ assistance programs, and when she does learn of the programs, the information mostly comes from community members, not from the Company.<sup>114</sup> Witness Williams also noted that “[i]t is very difficult, if not impossible, to sign up for any of these programs directly with Consumers Energy; [she has] needed assistance from other organizations, such as True North, to sign up for payment assistance programs.”<sup>115</sup> And as Witness Williams testifies, lack of knowledge can persist across generations: “Consumers Energy does not understand the generational effects of a lack of

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<sup>112</sup> Byrom Direct Testimony at 3 TR 967.40–41.

<sup>113</sup> Byrom Direct Testimony at 3 TR 967.34.

<sup>114</sup> Williams Direct Testimony at 3 TR 2390.

<sup>115</sup> *Id.* at 3 TR 2390.

knowledge about assistance programs. Since I know how my parents mitigated their energy costs, that is the knowledge I use and will pass down to my children . . . [A] lack of information can have long-term effects on our future generations while affecting how we are able to respond.”<sup>116</sup>

The Company needs to take additional action to address this knowledge gap and report on the effectiveness of those efforts, including but not limited to the LMI Customer Support Enhancement Project. In this case, the Company is seeking \$1.87 million for the LMI Customer Support Enhancement project, which is designed to increase awareness and enrollment in eligible programs and services.<sup>117</sup> As discussed further in Section F, this program aims to increase engagement from the current one in six LMI customers to one in three LMI customers and ease access to existing assistance options,<sup>118</sup> but since the program’s rollout in December of 2024, it is unclear how many additional customers are receiving assistance and how much additional assistance is being provided.<sup>119</sup> The Commission should order regular and specific reporting on the number of LMI customers engaging with the tool, reached, and—most importantly—new LMI customers enrolled in assistance programs. This reporting could also include concrete timelines for the rollout of the LMI program and the additional \$1.87 million investment sought in this case, as well as an evaluation of the project’s progress.

Lastly, and most critically, there is a key difference between affordability and assistance,<sup>120</sup> and the Company’s programs focus on providing some assistance but not on addressing the fundamental unaffordability of energy. Affordable bills, as described in Section A above, would be

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<sup>116</sup> *Id.* at 3 TR 2391.

<sup>117</sup> Byrom Direct Testimony at 3 TR 967.26.

<sup>118</sup> *Id.* at 3 TR 967.27.

<sup>119</sup> Cira-Reyes Direct Testimony at 3 TR 2351–52.

<sup>120</sup> *Id.* at 3 TR 2313.

at most 6% of household income for gas and electric, or 3% of income for electricity alone.<sup>121</sup> “This would ensure that families are able to afford energy and are not risking their health and safety or choosing between basic necessities because of energy bills that are simply too expensive for them to afford.”<sup>122</sup> UCC Witness Cira-Reyes demonstrated that, even though Consumers does not provide detail on energy burdens of CARE MB enrollees, “simple math shows that customers are often paying more than 6% of their income even with the assistance.”<sup>123</sup> For example, “a family of four at 50% of the FPL with \$215 per month in utility bills would pay 14.6% of their income *after* application of CARE MB assistance, a severe energy burden.”<sup>124</sup> As described in Section A.2, the affordability crisis goes far beyond what Consumers’ current assistance programs are capable of addressing.

The low assistance program enrollment and unaffordable energy burdens that persist even among those customers already enrolled in the Company’s assistance programs suggest that there is a dire need for substantial reform of the Company’s assistance programs. Consumers’ assistance programs should ultimately provide affordable energy to all customers in need of help. One way to do that, as discussed below, is through a Percentage of Income Payment Plan program.

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<sup>121</sup> *Id.* at 3 TR 2313–14 (citing Ex. UCC-5, APPLIED PUB. POL’Y RSCH. INST. FOR STUDY AND EVALUATION (APPRISE), RATEPAYER-FUNDED LOW-INCOME ENERGY PROGRAMS: PERFORMANCE AND POSSIBILITIES (2007), at 8).

<sup>122</sup> Williams Direct Testimony at 3 TR 2392.

<sup>123</sup> Cira-Reyes Direct Testimony at 3 TR 2314 (offering the example of “a family of four at 50% of the FPL with \$215 per month in utility bills [ , which ] would pay 14.6% of their income *after* application of CARE MB assistance, a severe energy burden”) (citing Ex. UCC-41, *Federal Poverty Level (FPL)*, HEALTHCARE, at 1–2; UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025) at 35–36).

<sup>124</sup> “The FPL for a family of four is \$32,150. 50% of \$32,150 = \$16,075; \$215 in electricity bill minus \$19.58 in CARE MB assistance = \$195.42 per month; \$195.42 per month times 12 months = \$2,345.04 per year; \$2,345.04 in annual electric bills divided by \$16,075 annual income at 50% of the FPL for a family of four = 14.6% energy burden.” *See* Cira-Reyes Direct Testimony, at 3 TR 2314 n. 102 (citing Ex. UCC-41, *Federal Poverty Level (FPL)*, HEALTHCARE, at 1–2; Ex. UCC-38 at 35).

### **3. The Commission Should Require the Company to Develop and Adopt a Percentage of Income Payment Plan (PIPP) Program.**

To address the many aforementioned shortcomings of the CARE MB program, the Commission should require the Company to adopt a PIPP program.<sup>125</sup> PIPP programs, in general, are “payment plans that have plan amounts equal to a set portion of a customer’s income.”<sup>126</sup> PIPP programs provide outcomes that are, by their nature, individualized to a customer.<sup>127</sup>

In advance of this rate case, the Company conducted a twenty-four-month PIPP pilot program, which ended in March 2025. The piloted PIPP program capped customer payments at an affordable 6% of income per month, provided assistance on a sliding scale based on each customer’s individual income, had an arrears cap of \$6,000 (twice the size of CARE MB’s), and forgave all arrears at the customers’ completion of the program.<sup>128</sup> It also required that customers have an income at or below 150% of the FPL to be eligible for enrollment.<sup>129</sup>

The data from this pilot program shows that the piloted PIPP program outperformed the Company’s current assistance programs. First, customers enrolled in the PIPP program paid much less out of pocket for electricity each month than customers enrolled in CARE MB. On average, customers with income between 20% and 75% of the FPL on the CARE MB program paid nearly four times the monthly energy bill that customers in the same income range paid in the PIPP pilot.<sup>130</sup> Customers making between 76% and 110% of the FPL in the CARE MB program paid,

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<sup>125</sup> Cira-Reyes Direct Testimony at 3 TR 2321; Williams Direct Testimony at 3 TR 2403.

<sup>126</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 284.

<sup>127</sup> Byrom Rebuttal Testimony at 3 TR 967.73.

<sup>128</sup> Cira-Reyes Direct Testimony, at 3 TR 2317–18 (citing UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 20).

<sup>129</sup> *Id.*

<sup>130</sup> “The average electricity bill for a customer making between 20% and 75% of the FPL in the CARE MB program was \$125 per month; The average electricity bill for a customer making between 20% and 75% of the FPL in the PIPP program was \$32 per month.” Cira-Reyes Direct Testimony, at 3 TR 2320 n. 129 (citing UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 196, 198).

on average, just over three times the monthly bill amount that customers in the same income bracket enrolled in the PIPP pilot paid.<sup>131</sup> And customers making between 111% and 150% of the FPL in the CARE MB program paid, on average, about two and a half times the monthly bill amount that customers in the same income bracket enrolled in the PIPP pilot paid.<sup>132</sup> Additionally, the Attorney General’s Office found that the Company’s PIPP pilot reduced energy burdens by 45% to 83% across all FPL income brackets.<sup>133</sup> And, in its Affordability Report, MPSC Staff found that energy burdens for PIPP enrollees (electric only) ranged from 3% to 5%, while comparable hypothetical CARE MB customers ranged from 7% to 17%.<sup>134</sup> Notably, the highest energy burdens are placed on those in the lowest income brackets. The PIPP pilot substantially addressed this impact on customers in the 20% to 75% FPL income range—reducing energy burdens from an astounding 30% to 5%.<sup>135</sup> To put this into context, the Energy Equity Project has described energy burdens between 15% and 20% as “extreme” and energy burdens above 20% as “catastrophic.”<sup>136</sup> Staff also found that there are disparate energy burden outcomes across tiers in the CARE and CARE MB programs, and that the PIPP program produces less variance in energy burden outcomes across FPL income tiers, meaning the PIPP program had greater relative equity across FPL income

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<sup>131</sup> The average electricity bill for a customer making between 76% and 110% of the FPL in the CARE MB program was \$142 per month; the average electricity bill for a customer making between 76% and 110% of the FPL in the PIPP program was \$47 per month. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 196, 198.

<sup>132</sup> The average electricity bill for a customer making between 111% and 150% of the FPL in the CARE MB program was \$159 per month; the average electricity bill for a customer making between 111% and 150% of the FPL in the PIPP program was \$61 per month. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 196, 198.

<sup>133</sup> Ex. UCC-48, MICHAEL E. MOODY & CHRISTOPHER BZDOK, MICH. DEP’T OF ATT’Y GEN. & CITIZENS UTIL. BD. OF MICH., U-20929 & U-21021 COMMENTS ON APPLICATIONS OF DTE GAS COMPANY., DTE ELECTRIC COMPANY AND CONSUMER ENERGY COMPANY FOR APPROVAL OF PIP PILOT PROGRAM (2025), at 5.

<sup>134</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 93.

<sup>135</sup> *Id.* at 110.

<sup>136</sup> *Id.* at 127.

tiers.<sup>137</sup> Thus, the importance of the drastic reductions in energy burdens across all income brackets by the PIPP pilot and the stark differences between the impacts of the PIPP pilot and CARE MB cannot be understated.

Second, the PIPP program increased on-time payments from customers for the lowest-income customers. MPSC Staff found, in their Affordability Report, that participants in the 20% to 75% FPL tier in the PIPP pilot experienced a “5% higher on-time payment improvement through year one than CARE and CARE MB, and approximately a 6% higher improvement through year two than CARE.”<sup>138</sup> Furthermore, Staff noted that there were “higher program completion rates through year one and year two of the PIPP pilot when compared to CARE and CARE MB.”<sup>139</sup>

Third, Consumers found that customers had a better experience with PIPP than with CARE MB, with 95% of customers reporting that they were highly satisfied with PIPP and only 84% reporting satisfaction with CARE MB.<sup>140</sup> In comparing these programs, UCC Witness Cira-Reyes noted that “customers were not asked to compare programs, only to rate their satisfaction with the program they were enrolled in.” As noted above, customers enrolled in PIPP experienced significantly lower monthly payments and lower energy burdens, especially in the 20% to 75% FPL tier.<sup>141</sup> In Rebuttal Testimony, Company Witness Byrom states that “low-income customers are both successful and satisfied with the existing CARE programs” as justification for the Company’s conclusion that the PIPP program should not be further pursued.<sup>142</sup> However, although 84% of customers were “satisfied” with receiving help through CARE MB, Witness Cira-Reyes

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<sup>137</sup> *Id.* at 108.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 115.

<sup>140</sup> Cira-Reyes Direct Testimony at 3 TR 2319–20 (citing UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 71).

<sup>141</sup> *Id.* at 3 TR 2320.

<sup>142</sup> Byrom Rebuttal Testimony at 3 TR 967.74.

notes that that does not necessarily “mean they would not prefer the substantially greater assistance through the PIPP program, especially if they were offered the more affordable alternative.”<sup>143</sup>

It is notable that DTE conducted a PIPP pilot program similar to Consumers, which DTE called its “Payment Stability Plan (PSP).”<sup>144</sup> DTE also found that customers were more satisfied with DTE’s PSP program than DTE’s other assistance programs; however, this led DTE to draw the opposite conclusion as Consumers: DTE preferred to continue using its PSP program, while Consumers would like to stay with its current APPs.<sup>145</sup>

While MPSC Staff did not fully endorse the PIPP program as Consumers piloted it, MPSC Staff does state that these results support “modifying the APPs to incorporate some elements of the PIPP.”<sup>146</sup> While UCC agrees with Staff that CARE MB is insufficient, UCC recommends implementing a PIPP program swiftly, with as few changes as possible from the pilot to avoid delay. As the affordability crisis worsens, the Company has a valuable tool, the piloted PIPP plan, already at its disposal to begin to implement now.

Despite clear evidence that current assistance programs are not addressing the affordability crisis faced by Consumers’ customers, and that the PIPP program does a better job of addressing it, the Company rejected the PIPP program<sup>147</sup> and asserts incorrectly that its programs are sufficient. Affirming its existing efforts, the Company states that “[c]onsidering all the cross-functional efforts to enhance MEAP and maintain a consistent customer experience, while also reducing customer confusion by modifying historic program designs, Consumers Energy

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<sup>143</sup> Cira-Reyes Direct Testimony at 3 TR 2320; *see also* Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 165 (listing other reasons from MPSC Staff for why survey comparisons are not robust).

<sup>144</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 23.

<sup>145</sup> *Id.* at 167.

<sup>146</sup> *Id.*

<sup>147</sup> Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 5.

recommends continuing with the existing MEAP and its current APP, CARE MB, to fully realize the benefits of the reform.”<sup>148</sup> But the Company’s arguments do not hold water. As discussed above, the interactions between CARE MB, LIA, and RIA can, in the described hypothetical circumstances, create perverse outcomes.<sup>149</sup> Additionally, it is challenging for customers to understand the assistance programs and learn of their existence in the first place.<sup>150</sup> MPSC Staff echoes this concern in its Affordability Report in Case No. U-20757, stating that “[r]etaining the significant number of energy assistance access points does not seem to promote streamlined experiences, when customers must apply for so many different forms of assistance at so many different program administrators.”<sup>151</sup>

Despite clear benefits provided by the PIPP program to LMI customers, the Company further rejected the PIPP program by asserting that the costs of the PIPP program are “substantially higher” than its current programs and the benefits do not outweigh these costs, without providing sufficient evidence or offering meaningful alternatives to address the affordability crisis. The Company estimated that PIPP would cost \$232 million per year, as compared to CARE MB, which the Company estimated would cost \$156 million per year.<sup>152</sup> However, in the same report, Consumers measured that in January 2025, CARE MB was actually more expensive to administer

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<sup>148</sup> Byrom Rebuttal Testimony at 3 TR 967.74.

<sup>149</sup> Cira-Reyes Direct Testimony at 3 TR 2312–13.

<sup>150</sup> Williams Direct Testimony at 3 TR 2390.

<sup>151</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 137.

<sup>152</sup> Cira-Reyes Direct Testimony at 3 TR 2318 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 81).

than PIPP by an average of \$48 per customer.<sup>153</sup> The Company has not clarified this discrepancy.<sup>154</sup> Nevertheless, the Company deemed the PIPP program “unsustainable” due to cost.<sup>155</sup>

UCC Witness Cira-Reyes noted, however, that “what is truly unsustainable is the energy insecurity that LMI community members continue to experience, especially in the face of increasing energy costs.”<sup>156</sup> The Company acknowledges that the “main contributor to the higher program costs” for PIPP were “lower customer payment amount obligations.”<sup>157</sup> This means that the PIPP program helped LMI customers pay less towards energy each month than most would on CARE MB. As a result, customers enrolled in PIPP are better equipped to pay for their other basic needs since their monthly contribution towards energy bills is capped at an affordable 6% of the customer’s income.<sup>158</sup> While cost is an important factor, it is not the only, nor central, factor in determining payment assistant program options. As noted by the Attorney General’s office in Case No. 20757, “[i]t may have been politically expedient to make every reasonable effort to improve assistance without increasing assistance costs, but in our view, it was never realistic to cling to that hope. We have known for years that a small minority of low-income customers receive the assistance for which they are eligible. We have also known for years that far too many Michigan households face severe energy burdens, spending more than 10% of their income on energy costs.”<sup>159</sup>

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<sup>153</sup> Cira-Reyes Direct Testimony at 3 TR 2318 n. 120 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 65).

<sup>154</sup> Ex. UCC-47, Consumers’ Response UCC’s Third Discovery Request, U21870-UCC-CE-0685, at 2.

<sup>155</sup> Cira-Reyes Direct Testimony at 2 TR 1795 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 81).

<sup>156</sup> Cira-Reyes Direct Testimony at 3 TR 2320.

<sup>157</sup> *Id.* at 3 TR 2318 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 80).

<sup>158</sup> *Id.* at 3 TR 2319.

<sup>159</sup> *In re Consumers Energy Co.*, MPSC Case No. U-20757, Comments of the Attorney General and CUB (Oct. 30, 2025), at 16.

The added cost to administer the PIPP program is well worth the added benefit. Consumers disagrees based on its assertion that the existing APPs, on top of being cheaper than PIPP to administer, were comparably successful to the PIPP program.<sup>160</sup> This conclusion stemmed from their finding that “disconnection rates for non-payment were similar between all programs” and “payment behaviors improved positively regardless of the APP.”<sup>161</sup> However, as discussed in greater detail above, Staff found that on-time payment behavior improved more for customers in the lowest income bracket in the PIPP program than for customers in the same bracket enrolled in CARE MB.<sup>162</sup> In other words, contrary to the Company’s conclusion that these metrics were similar, the customers most in need of assistance were better able to pay their bills on time under PIPP than CARE MB.

Additionally, disconnection rates and payment behaviors are not the only important metrics upon which to compare the PIPP program to the Company’s existing APPs. As detailed above, PIPP also performed better in terms of customer satisfaction,<sup>163</sup> energy burdens,<sup>164</sup> and the Company’s own definition of success.<sup>165</sup> Furthermore, under a PIPP program (unlike CARE MB), no customer would be adversely affected by enrolling in multiple assistance programs. LIA and

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<sup>160</sup> Cira-Reyes Direct Testimony at 3 TR 2319 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 80).

<sup>161</sup> *Id.*

<sup>162</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 108.

<sup>163</sup> Cira-Reyes Direct Testimony at 3 TR 2319–920 (citing UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 71).

<sup>164</sup> *Id.* at 3 TR 2321 (citing UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 20); Ex. UCC-48, MICHAEL E. MOODY & CHRISTOPHER BZDOK, MICH. DEP’T OF ATT’Y GEN. & CITIZENS UTIL. BD. OF MICH., U-20929 & U-21021 COMMENTS ON APPLICATIONS OF DTE GAS COMPANY., DTE ELECTRIC COMPANY AND CONSUMER ENERGY COMPANY FOR APPROVAL OF PIP PILOT PROGRAM (2025), at 5.

<sup>165</sup> Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 52.

RIA credits could still help reduce agency costs, in alignment with the Company's goals,<sup>166</sup> but not at the expense of customers in need (as can result when LIA and RIA are combined with CARE MB).<sup>167</sup> Thus, the Company's cost-benefit analysis comparing PIPP to CARE MB does not adequately account for the true harms of energy insecurity currently plaguing Consumers' customers, which could be greatly remedied by the installation of a PIPP program.

Despite the centrality of payment assistance to affordability for LMI customers and the fact that a settlement agreement in MPSC Case No. U-20650 explicitly left discussion of PIPP programs open to "any future proceeding,"<sup>168</sup> the Company and MPSC Staff have both asserted that consideration of PIPP programs is not relevant to the instant case. In Rebuttal Testimony, Company Witness Byrom argues that "at the present time, the opportunity to comment on the pilot, the report, and any suggested guidelines for assistance programming remains most appropriate in [the U-21021] docket."<sup>169</sup> In a notice of filing in U-21021 from September 2025, MPSC staff noted that it had filed an energy affordability report in Case Docket No. U-20757 and that "Staff recommends the Commission address all issues raised in these cases and the U-20757 Staff energy affordability report jointly in MPSC Case No. U-20757 going forward."<sup>170</sup> Despite payment programs being at the heart of affordability concerns, the Company and Staff asserted that discussion of these issues does not belong in this case.<sup>171</sup>

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<sup>166</sup> Cira-Reyes Direct Testimony at 3 TR 2313 (citing Ex. UCC-39 Consumer Energy Company's Response to UCC's First Discovery Request, U21870-UCC-CE-0239, at 2).

<sup>167</sup> *Id.* at 3 TR 2312–13.

<sup>168</sup> *In re Consumers Energy, Co.*, MPSC Case No. U-21021, Consumers Energy Company's Application for Ex Parte Approval of a Percent of Income Payment Plan Pilot (Mar. 9, 2021), at 2.

<sup>169</sup> Byrom Rebuttal Testimony at 3 TR 967.75.

<sup>170</sup> *In re Consumers Energy Co.*, MPSC Case No. U-21021, Notice of Filing: Energy Affordability Report (Sept. 10, 2025), at 2.

<sup>171</sup> Ex. UCC-201, Consumer Energy Company's Response to UCC's Fourth Discovery Request, U21870-UCC-CE-0740, at 1 (stating that "Consumers Energy Company objects to this discovery request on the grounds that the request is not relevant to this proceeding as Consumers Energy is not seeking continuation of the Percentage of Income Payment Plan Pilot in the proceeding"); Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 18.

Contrary to the views of the Company and MPSC Staff, discussion of the PIPP program is relevant to this proceeding. Case No. U-21021 was created to approve the PIPP pilot program, after a settlement agreement in MPSC Case No. U-20650, a Consumers Energy gas rate case. This settlement included the provision that “[t]he parties expressly reserve their respective rights to advocate for or against any proposed PIP program in *any future proceeding*.”<sup>172</sup> This is a future proceeding, where the Company has unilaterally decided not to pursue a PIPP program following the completion of the pilot program.<sup>173</sup> Moreover, as the Michigan Environmental Council (MEC) stated in their Comments on the Report, Staff’s recommendations have not been “subject to validation, evaluation, and potential challenge through discovery, expert testimony, cross examination, briefing, or other aspects of a contested case proceeding.”<sup>174</sup> In order to allow for rigorous examination of all issues surrounding the implementation of a PIPP program (and affordability more broadly), and to adhere to the settlement agreement in MPSC Case No. U-20650, the Commission should welcome insight from all parties in any proceeding.

In sum, the PIPP pilot significantly reduced energy burdens for low-income customers, improved on-time payments, and created incredibly high customer satisfaction. The Company wrongly decided not to propose a PIPP program after the pilot, in part due to differences in cost and in part due to an incorrect assertion that CARE MB and PIPP were comparably successful. However, PIPP’s outperformance on all aforementioned characteristics of affordability suggests that the Company’s conclusion was not only misguided, but also misunderstands the key purpose

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<sup>172</sup> *In re Consumers Energy, Co.*, MPSC Case No. U-21021, Consumers Energy Company’s Application for Ex Parte Approval of a Percent of Income Payment Plan Pilot (Mar. 9, 2021), at 2.

<sup>173</sup> Cira-Reyes Direct Testimony at 3 TR 2320 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 196, 198).

<sup>174</sup> *In re MPSC*, MPSC Case No. U-20757, Comments on MPSC Staff Energy Affordability Report by Michigan Environmental Council, Natural Resources Defense Council, Ecology Center, and Vote Solar (Oct. 30, 2025), at 13–14.

of affordability programs. In its Affordability Report in Case No. U-20757, MPSC Staff noted that “given... rate case proceedings had already identified faults or weaknesses in the current energy assistance landscape, Staff found Consumers Energy’s proposal to retain the status quo lackluster.”<sup>175</sup> The current assistance programs do not make energy affordable for Consumers’ customers in need. And, although the Company suggests that this is not an appropriate docket to discuss a PIPP program,<sup>176</sup> the Commission cannot disregard the settlement agreement that preserved the right to discuss “any proposed PIP program in *any future proceeding*.”<sup>177</sup> The Commission should require Consumers to adopt a PIPP that provides affordable energy at a total of 6% of customer income, or 3% for electric bills alone, and, to the extent permissible by law, all customers with incomes at or below 200% of the FPL should be eligible.<sup>178</sup>

**4. As the Commission Considers Reform and Overhaul to Assistance Payment Programs, the Commission Should Approve the Company’s proposed increases to the LIA Enrollment Cap and Credit.**

The Commission should support the Company’s proposed increase to the LIA credit and enrollment cap. As described above, the Company proposes to increase the credit and cap of the LIA credit annually for the next four years, until it reaches a credit of \$55 per month and 8,200 customers by 2029.<sup>179</sup> Although this change would not solve the affordability crisis, additional assistance to support low- and moderate-income customers, who account for more than one third of the Company’s customers,<sup>180</sup> is always welcome. The Commission should adopt this proposal while it is considering broader program changes.

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<sup>175</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 107.

<sup>176</sup> Byrom Rebuttal Testimony at 3 TR 967.75.

<sup>177</sup> *In re Consumers Energy, Co.*, MPSC Case No. U-21021, Consumers Energy Company’s Application for Ex Parte Approval of a Percent of Income Payment Plan Pilot (Mar. 9, 2021), at 2.

<sup>178</sup> Cira-Reyes Direct Testimony at 3 TR 2311, lines 6–9.

<sup>179</sup> *Id.* at 3 TR 2308 (citing Ex. UCC-39, Consumer Energy Company’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0239, at 2).

<sup>180</sup> Byrom Direct Testimony, at 3 TR 967.28.

**5. To Help Keep Rates Affordable, the Commission Should Approve the Lowest Possible ROE. (*Issue IV.C. Overall Rate of Return*)**

The Commission should limit Consumers' return on equity (ROE) as much as possible. Multiple other intervenors also agree that the Company should have a lower ROE than its proposed ROE of 10.25%.<sup>181</sup> Walmart Witness Lyon explained that the Company's proposed ROE is "excessive"<sup>182</sup> and "significantly higher" than the ROEs the Commission has approved since 2023, the average value of which is 9.89%.<sup>183</sup> Further, MPSC Staff recommends a ROE of 9.75% because this is the midpoint of Staff's range of 9.25% to 10.25%.<sup>184</sup> Notably, MPSC Staff's proposed ROE, which is less than the Company's requested ROE,<sup>185</sup> does not account for the affordability concerns raised in this brief that justify an even lower ROE. CUB Witness Bandyk recommends an ROE of 9.22%, which would "gradually reduce the Company's ROE."<sup>186</sup> According to Bandyk, 9.22% represents the midpoint between 8.63% (the ROE that Bandyk calculated using "objective financial methods") and the Company's current ROE of 9.9%.<sup>187</sup> Bandyk calculates that the Company's proposed ROE of 10.25% would impose \$70 million in additional costs to ratepayers compared to an ROE of 9.22%.<sup>188</sup> Given the recommendations proposed by Walmart, MPSC Staff, and CUB, the Commission should approve a ROE that is as low as possible. Doing so would also be consistent with considering affordability in the instant rate case, because allowing the Company to increase its ROE despite its unaffordable rates would provide the Company with an undeserved reward despite its failure to make rates more affordable.

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<sup>181</sup> Bulkley Direct Testimony at 4 TR 2720 (stating that "the Company is requesting an ROE of 10.25%").

<sup>182</sup> Lyon Direct Testimony at 3 TR 2606.

<sup>183</sup> *Id.* at 2608–09.

<sup>184</sup> Megginson Direct Testimony at 6 TR 4523.

<sup>185</sup> *Id.*

<sup>186</sup> Bandyk Direct Testimony at 6 TR 3945.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at 3944.

**6. The Commission Should Also Require the Company to Perform a Regular Affordability Analysis, Incorporating the Commission’s Definition of Energy Affordability.**

Despite Consumers agreeing with the definition of affordability that the Commission uses, it has not conducted sufficient analysis of affordability, including as related to its assistance programs, which incorporate this definition.<sup>189</sup> In Case No. U-20757, the Commission provided the following definition of “energy affordability”:

The extent to which a household has the resources to meet their home energy needs for heating, cooling and other uses in a healthy, sustainable and energy efficient manner without compromising a household’s ability to meet other basic needs.<sup>190</sup>

In MPSC Case No. U-21534, the Commission directed utilities to “use [its] definition of affordability.”<sup>191</sup> The Company states that although it agrees with the definition, it does not have plans to incorporate the “details included in the definition into affordability analysis.”<sup>192</sup> To the extent the Company is already analyzing affordability to some extent, such as in the LMI Customer Support Enhancement program,<sup>193</sup> the Commission’s definition of affordability should be incorporated into that analysis. If the Company truly wants to follow through on its goal of “reduc[ing] energy burden” and “improv[ing] household stability,”<sup>194</sup> it must conduct a comprehensive affordability analysis, including on the efficacy of its payment assistance offerings in supporting LMI customers, that takes into account all aspects of the Commission’s definition. Otherwise, the Company’s adoption of this definition is just performative.

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<sup>189</sup> UCC-42, Consumers Energy Company’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0234, at 1–3

<sup>190</sup> *In re MPSC*, MPSC Case No. U-20757, Order (Dec. 21, 2023), at 36.

<sup>191</sup> *In re DTE Electric Co.*, MPSC Case No. U-21534, Order (Jan. 23, 2025), at 460–61.

<sup>192</sup> UCC-42, Consumers Energy Company’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0234, at 3

<sup>193</sup> Cira-Reyes Direct Testimony at 3 TR 2314–15 (citing Ex. UCC-42, Consumer Energy Company’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0234, at 1–3).

<sup>194</sup> Ex. UCC-42, Consumers Energy Company’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0234, at 1.

Furthermore, despite Consumers Witnesses Byrom and Myers claiming that the Company is not capable of conducting an affordability analysis, Consumers uses customer identifiers indicating an awareness of whether their customers can afford Consumers' rates.<sup>195</sup> Witness Byrom stated in rebuttal testimony that Consumers "does not directly validate income or gather household and income data from customers" and thus, "the Company does not have an accurate method for calculating customers' energy burden[s]."<sup>196</sup> However, in the MPSC Staff's Report on Affordability, MPSC Staff stated that Consumers "instructed agencies to collect demographic information, including age, employment, and fixed income," which "could potentially speak to pertinent topics in the energy assistance space."<sup>197</sup> Thus, while the Company may not have had each customer's specific income or wealth data in its possession, it had possession of or was capable of collecting data through agencies that would have given Customers insights into a customer's ability to afford its Consumers bill.

Furthermore, despite Witness Myers's claim in rebuttal testimony that Consumers could not and should not perform an affordability analysis, the Company possesses data that suggests that it is capable of performing such an analysis. Witness Myers stated that "[t]he Company would not be able to incorporate information for all customers for each of the aspects included in the Commission's definition of energy affordability" and that "the Company is unsure of how [an affordability analysis] would be completed or if it would even be possible to complete."<sup>198</sup> Despite this assertion, Consumers classifies some of its customers into groups including "won't pay," meaning that they are "frequently late; ha[ve] multiple late payments or open invoices," and "can't

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<sup>195</sup> Cira-Reyes Direct Testimony at 3 TR 2315.

<sup>196</sup> Byrom Rebuttal Testimony at 3 TR 967.71.

<sup>197</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 119.

<sup>198</sup> Myers Rebuttal Testimony at 3 TR 1848.

pay,” meaning “ha[ve] moderate on-time payment behavior (at least 50%).”<sup>199</sup> This classification implies that Consumers does have some internal methodology to understand whether an individual customer can or will not be able to make payments—a key indicator of affordability. This internal methodology shows that Consumers analyzed customers’ ability to afford its rates despite its claims that it did not conduct an affordability analysis. An order from the Commission to conduct such an analysis could be prescriptive or not. It could tell the Company exactly what it needs to do to perform such an analysis, it could encourage stakeholder discussions with the Company, or it could give the Company flexibility, initially, in developing the analysis.

When Consumers requests a rate increase, the Commission should order the Company to conduct an affordability analysis so that it understands its customers’ energy burdens and the impact that the rate increase will have on them. The Commission should require the analysis to consider and address the Commission’s definition of affordability, and the Commission should order the Company to conduct such an analysis as part of any future proposed rate increase. Without an affordability analysis, the Commission will lack critical information about whether customers can afford the proposed rates in light of both the ongoing affordability crisis and the Company’s payment assistance program offerings.

### **7. The Commission Is Legally Required to Consider the Affordability of Rates When Considering Rate Increase Applications.**

Michigan law requires the Commission to consider the affordability of rates in utility rate cases. MCL § 460.557, which provides guidelines for fixing and evaluating electric utility rates, states clearly that the Commission is required to set rates that are both “just and reasonable.”<sup>200</sup>

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<sup>199</sup> Ex. UCC-43, Consumers Energy Company’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0233\_Byrom\_ATT\_1, at 4; Ex. UCC-44, Consumer Energy Company’s Response to UCC’s Second Discovery Request, U21870-UCC-CE-0369, at 1.

<sup>200</sup> MCL § 460.557(4).

The Commission can achieve this only through a comprehensive and careful consideration of affordability.

Increasing Consumers Energy's rates by the amount requested by the Company is neither just nor reasonable. Sufficient and appropriate consideration of affordability on the record in this case will lead the Commission to conclude that a rate increase would be unaffordable, and therefore unjust and unreasonable. Furthermore, should the Commission fail to consider the extensive evidence of the affordability crisis, the Commission will violate the Michigan Administrative Procedure Act and the Michigan Constitution. It is not an acceptable answer for the Commission to raise rates while punting affordability issues to the Energy Affordability and Assistance Collaborative (EAAC). The EAAC is demonstrably unable to address affordability concerns adequately. It is the Commission's legal obligation to consider affordability issues on the record in rate cases such as this one.<sup>201</sup>

**a. The "Just and Reasonable" Standard for Rate Increases Requires the Commission to Assess Affordability.**

The Commission is legally required to consider affordability in this rate case. Under Michigan law, the Commission must set rates that are "just and reasonable,"<sup>202</sup> and it cannot determine whether Consumers Energy's proposed rate increase is "just and reasonable" without considering whether customers can afford the proposed rates.

In determining whether a rate increase is just and reasonable, the Michigan Supreme Court requires the Commission to undertake "a comprehensive examination of all factors involved."<sup>203</sup>

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<sup>201</sup> See MCL § 460.557(2) (stating that the Commission must "consider and give due weight to all lawful elements necessary to determine the price to be fixed for supplying electricity," including the "value of service to the consumer" and a "reasonable return on the fair value of all property used in the service").

<sup>202</sup> MCL § 460.557(4).

<sup>203</sup> *Twp. of Meridian v. City of E. Lansing, Mich.*, 342 Mich. 734, 749 (1955)

Michigan state law provides some of these factors, to which the Commission must give “due weight.”<sup>204</sup> These factors include both “cost” and “value of service to the consumer,” both of which focus on the consumer’s perspective.<sup>205</sup> While the Commission has broad discretion in setting rates,<sup>206</sup> the Michigan Supreme Court requires a “balancing of investor and consumer interests.”<sup>207</sup> To this end, the Commission has the “authority to exclude [all unnecessary elements of expense] from public utility operating expenses which place unnecessary burdens upon the consumer;” as well as “any and all unnecessary elements of expense in determining a just and reasonable rate.”<sup>208</sup> Additionally, the U.S. Supreme Court has held that public utilities are constitutionally entitled only to a “reasonably sufficient” return on investment to enable “efficient and economical management” of the utility.<sup>209</sup>

First, the Commission cannot consider the fact of “cost” without evaluating affordability. Cost and affordability are conceptually intertwined; if the costs are too high, customers cannot afford them. In Case No. U-20757, the Commission defined “energy affordability” as “the extent to which a household has the resources to meet their home energy needs . . . without compromising a household’s ability to meet other basic needs.”<sup>210</sup> As recently as last year, the Commission reaffirmed this definition, finding it “important that utilities . . . use the definition of affordability approved in [U-20757] to ensure that the Commission may properly consider and decide issues

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<sup>204</sup> MCL § 460.577(2).

<sup>205</sup> *Id.* Other statutory factors include “reasonable return on the fair value of all property used in the service, depreciation, obsolescence, risks of business, . . . the connected load, the hours of the day when used, and the quantity used each month,” though this list is not stated to be exhaustive. *Id.*

<sup>206</sup> *Ass’n of Bus. Advocating Tariff Equity*, 208 Mich. App. at 259.

<sup>207</sup> *Id.* at 267; see *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (interpreting a similar requirement on a similar state statute); see also *City of Detroit*, 308 Mich. at 716.

<sup>208</sup> *City of Detroit*, 308 Mich. at 716–17.

<sup>209</sup> *Bluefield Water Works and Improvement Company*, 262 U.S. at 693.

<sup>210</sup> *In re MPSC*, MPSC Case No. U-20757, Order (Dec. 21, 2023), at 36.

regarding high energy burdens experienced by low-income and vulnerable customers.”<sup>211</sup> Because the Commission has instructed utilities to “use the definition of affordability,” the Commission itself must also consider affordability in assessing the cost of rate increase to customers. To abide by its past orders and properly consider the cost factor, the Commission must evaluate affordability.

Similarly, when considering the “value of service to the consumer,” the Commission must also consider affordability.<sup>212</sup> Electricity is a necessity of modern life. As described by Witnesses Cira-Reyes and Williams, consumers who cannot afford their monthly utility bills are often forced to choose between different basic necessities—a choice which directly implicates the Commission’s own prohibition on energy costs “compromising a household’s ability to meet other basic needs” in its definition of affordability. For example, Witness Cira Reyes recalled seeing households in his community “having to choose among paying bills on time, keeping houses at healthy temperatures, and paying for basic necessities such as food or medicine.”<sup>213</sup> Witness Williams stated that she has seen “people staying in relationships or in other harmful situations, making that sacrifice to make sure that they can afford to provide their children with basic necessities such as heating, cooling, medical necessities, and refrigeration.”<sup>214</sup> Further, Witness Cira-Reyes described coping behaviors among low-income households struggling with unaffordable rates including keeping homes at unsafe temperatures or limiting appliance use and connecting these behaviors with serious health and safety risks,<sup>215</sup> and Witness Williams stated that she and others in her community attempt to reduce their energy costs by sharing spaces and

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<sup>211</sup> *In re DTE Electric Co.*, MPSC Case No. U-21534, Order (Jan. 23, 2025), at 460–61.

<sup>212</sup> MCL § 460.557(2).

<sup>213</sup> See Cira-Reyes Direct Testimony at 3 TR 2295.

<sup>214</sup> Williams Direct Testimony at 3 TR 2382.

<sup>215</sup> See Cira-Reyes Direct Testimony at 3 TR 2299–301 (citing Ex. UCC-17, NAT’L ENERGY ASSISTANCE DIRS.’ ASS’N (NEADA), 2011 NATIONAL ENERGY ASSISTANCE SURVEY FINAL REPORT (2011); Ex. UCC-18, NEADA, 2018 NATIONAL ENERGY ASSISTANCE SURVEY FINAL REPORT (2018).)

devices often, using the oven as a heat source, maintaining uncomfortable temperatures, and using air conditioning as little as possible.<sup>216</sup>

Because these consumers must engage in energy-limiting behavior to prevent their bills from becoming unaffordable, the “value of service”<sup>217</sup> that these consumers receive is significantly degraded. Low-income customers also experience higher rates of weather-related deaths, often as a direct result of the very energy-limiting behavior in which they engage to afford their bills.<sup>218</sup> Additionally, when customers are unable to afford to maintain safe temperatures in their household, this can trigger respiratory issues and asthma symptoms for members of the household, particularly in the winter.<sup>219</sup> In addition to facing this physical distress, customers who are unable to afford their energy bills also suffer from higher levels of mental distress and depression.<sup>220</sup> The fact that these customers face risks of illness and death to afford electricity diminishes the “value of service”<sup>221</sup> even more.

Furthermore, affordability is a primary customer interest, and the Commission must consider the record on that issue in the instant case. For example, UCC Witness Cira-Reyes stated in his direct testimony that U.S. Census data showed that, “between February 6 and March 4, 2024, 33.2% of Michigan households reported some frequency of foregoing other basic needs . . . 19.9% reported keeping the home at an unsafe or uncomfortable temperature, and 25.8% reported being

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<sup>216</sup> See Williams Direct Testimony at 3 TR 2381–82.

<sup>217</sup> MCL § 460.557.

<sup>218</sup> See Cira-Reyes Direct Testimony at 3 TR 2299–300 (citing Ex. UCC-19, Tony G. Reames et al., *Exploring the Nexus of Energy Burden, Social Capital, and Environmental Quality in Shaping Health in US Counties*, 18 INT’L J. OF ENV’T RSCH. & PUB. HEALTH 620 (2021), at 7).

<sup>219</sup> Ex. UCC-21, Diana Hernández, *Understanding ‘Energy Insecurity’ and Why It Matters to Health*, 167 SOC. SCI. & MED. 1 (2016), at 7; see also Ex. UCC-22, *Energy Burden Research*, ACEEE, at 1.

<sup>220</sup> Ex. UCC-20, Soojin Han et al., *Energy Burden and Mental Health: A National Study in the United States*, 955 SCI. OF THE TOTAL ENV’T 176796 (2024), at 7.

<sup>221</sup> MCL § 460.557(2).

unable to pay the energy bill in full.”<sup>222</sup> Further, Company Witness Byrom stated that “LMI customers account for more than 1 of every 3 customers in Consumers Energy’s service territory,”<sup>223</sup> and UCC Witness Williams described how “Consumers Energy’s bills are currently too high for many people to safely pay, even when engaging in various energy-saving measures that could actually be hazardous to people’s health and safety.”<sup>224</sup> These statements show that many of the Company’s customers already find it difficult to afford rates. In addition, many customers suffer severe consequences as a result. Witness Cira-Reyes recounted that “U.S. counties that experience higher energy burdens are associated with experiencing higher rates of premature death, fair or poor self-reported health, and lower life expectancy.”<sup>225</sup> Affordability is central to the basic necessity of having electricity. The dire consequences of unaffordable rates establish that affordability is a primary customer interest. Thus, the Commission cannot complete its legally required ratemaking balancing test if it excludes affordability from its analysis.

The Commission cannot fully consider affordability only by examining the Company’s bill assistance programs. As recounted in Part A.2 above, Consumers’ current bill assistance programs do not serve all eligible customers or make energy bills truly affordable for many of the customers they do serve.<sup>226</sup> The RIA program, for example, provides only an \$8 credit toward monthly electricity bills, which is less than the Company’s proposed increase of \$14 per month in an

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<sup>222</sup> Cira-Reyes Direct Testimony at 3 TR 2301(citing *In re DTE Gas Co.*, MPSC Case No. U-21291, Schott Direct Testimony (May 7, 2024), at 4 TR 1082).

<sup>223</sup> Byrom Direct Testimony at 3 TR 967.28.

<sup>224</sup> Williams Direct Testimony at 3 TR 2377.

<sup>225</sup> Cira-Reyes Direct Testimony at 3 TR 2299–300 (citing Ex. UCC-19, Tony G. Reames et al., *Exploring the Nexus of Energy Burden, Social Capital, and Environmental Quality in Shaping Health in US Counties*, 18 INT’L J. OF ENV’T RSCH. & PUB. HEALTH 620 (2021), at 7).

<sup>226</sup> See *supra* Section III.A.2.

average residential customer's bill.<sup>227</sup> Additionally, the CARE Flat Rate program, which Consumers is phasing out, has an arrears cap of \$4,000, and the CARE MB program, which is Consumers' new primary bill assistance program, has an even lower arrears cap of only \$3,000.<sup>228</sup> Customers enrolled in CARE MB will be responsible for paying arrears beyond \$3,000 after they graduate from the twenty-four-month program.<sup>229</sup>

Due to insufficient information and accessibility, the number of customers who manage to enroll in the bill assistance programs is not close to the number of customers who struggle to afford the Company's rates. LMI customers face an acute lack of information regarding their eligibility for bill assistance programs and how to sign up for them.<sup>230</sup> UCC Witness Cira-Reyes stated that "[c]urrently, just one out of every six LMI customers is enrolled in one or more of Consumers' assistance programs."<sup>231</sup> Company Witness Byrom reported that, after the Company conducted research "to better understand LMI customers and to identify barriers to awareness about assistance options and participation in utility programs,"<sup>232</sup> the research revealed that "18% of LMI customers were unaware of how to access help, 36% were unaware they qualify for programs, 25% perceived the process as overly complex and time-consuming,"<sup>233</sup> and "51% felt too overwhelmed to take on another project."<sup>234</sup> In this same vein, Witness Williams described a "lack of clear communication and accessibility of payment assistance programs" which "exacerbates the

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<sup>227</sup> Cira-Reyes Direct Testimony, at 3 TR 2309 (citing Connolly Direct Testimony at 3 TR 157 ("average monthly residential customer bill is projected to increase 11% from approximately \$132 per month to \$146 per month")).

<sup>228</sup> Cira-Reyes Direct Testimony at 3 TR 2307-08.

<sup>229</sup> *Id.* at 3 TR 2308.

<sup>230</sup> *Id.* at 3 TR 2311.

<sup>231</sup> Cira-Reyes Direct Testimony at 3 TR 2310 (citing Byrom Direct Testimony at 3 TR 967.27).

<sup>232</sup> Byrom Direct Testimony at 3 TR 967.32

<sup>233</sup> *Id.* at 3 TR 967.34.

<sup>234</sup> *Id.*

situation, leading people to rely on their communities and limited resources during outages.”<sup>235</sup> Because of this lack of information, the Commission cannot satisfactorily consider affordability only by considering the Company’s current bill assistance programs.

Also, while assistance programs may help some customers pay their bills as long as the customers are enrolled, assistance programs do not help to make energy rates themselves affordable. Witness Cira-Reyes recounted how “the Company’s current use of multiple programs is inefficient, confusing, and can have negative impacts on customers.”<sup>236</sup> Customers enrolled in multiple assistance programs can face negative impacts from being in multiple programs despite their demonstrated need for help with paying their bills, as it is possible that “the application of an LIA or RIA credit to a customer’s bill ultimately makes them eligible for *less* assistance under CARE MB than if they had only been enrolled in the CARE MB program.”<sup>237</sup>

Because of Consumers’ bill assistance programs’ general insufficiency, inaccessibility, and inefficiency, and the Company’s failure to sufficiently address both the affordability crisis and the shortcomings of its current payment assistance options in its initial application, the Commission cannot find that the rate increase is “just and reasonable” under Michigan law.<sup>238</sup> The Commission must undertake a “comprehensive examination”<sup>239</sup> of affordability, and if it only reviewed the bill assistance programs as a proxy for considering affordability, then the Commission would be reviewing only some aspects of affordability for some customers. Additionally, the bill assistance programs only provide occasional temporary relief without making real progress toward affordable energy rates. Thus, if the Commission only evaluates bill assistance programs in its consideration

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<sup>235</sup> Williams Direct Testimony at 3 TR 2377.

<sup>236</sup> Cira-Reyes Direct Testimony at 3 TR 2311.

<sup>237</sup> See Cira-Reyes Direct Testimony, 3 TR 2312–13; *supra* Section III.A.2 (discussing the insufficiency of Consumers’ current bill assistance programs).

<sup>238</sup> MCL § 460.557(4).

<sup>239</sup> *Twp. of Meridian*, 342 Mich. at 749.

of affordability, it will fail to conduct a proper “balancing of investor and consumer interests” and thus fail to fulfill its legal obligations in considering rate increases.<sup>240</sup>

In sum, the rate-setting factors that the Commission must consider require that the Commission consider affordability in this case. It is impossible to “comprehensive[ly] examin[e]”<sup>241</sup> either “cost” or “value of service to the consumer” without evaluating affordability. The Commission cannot “balanc[e] . . . consumer interests”<sup>242</sup> if it does not consider affordability because the affordability of rates is a core consumer interest. Further, existing energy assistance programs have not made the Company’s rates affordable. Because it is required to consider “all factors involved,”<sup>243</sup> the Commission must consider affordability in this rate case.

**b. Without Substantial Evidence, the Commission’s Approval of Consumers’ Rate Increases Would Be Arbitrary and Capricious Under Michigan’s Administrative Procedure Act.**

Under Michigan’s Administrative Procedure Act (APA), the Commission must consider and respond to the evidence and arguments presented by UCC on affordability in determining whether to approve a rate increase. Section 106 of the Michigan APA states that a court must set aside an agency order if it is “[a]rbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.”<sup>244</sup> The Michigan Court of Appeals has further explained that “[a] ruling is arbitrary and capricious when it lacks adequate determining principles, circumstances, or significance, or when it is freakish or whimsical.”<sup>245</sup> Thus, the Commission must consider the factors before it to

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<sup>240</sup> *Ass’n of Bus. Advocating Tariff Equity*, 208 Mich. App. at 267; see *Hope Nat. Gas Co.*, 320 U.S. at 603 (interpreting a similar requirement on a similar state statute); see also *City of Detroit*, 308 Mich. at 716.

<sup>241</sup> *Twp. of Meridian*, 342 Mich. at 749.

<sup>242</sup> See *Ass’n of Bus. Advocating Tariff Equity*, 208 Mich. App. at 267; *Hope Nat. Gas Co.*, 320 U.S. at 603.

<sup>243</sup> *Twp. of Meridian*, 342 Mich. at 749.

<sup>244</sup> MCL § 24.306(1)(e).

<sup>245</sup> *Wescott v. Civ. Serv. Comm’n*, 298 Mich. App. 158, 162 (Mich. Ct. App. 2012).

ensure that it has “adequate determining principles” and “circumstances,”<sup>246</sup> and the Commission must explain itself in its orders to demonstrate that its decision is not “unwarranted.”<sup>247</sup>

Furthermore, the record before the Commission must support the Commission’s order. Section 85 of the Michigan APA requires that “[e]ach conclusion of law shall be supported by authority or reasoned opinion.”<sup>248</sup> The Michigan Constitution also requires the Commission’s order to be supported by “competent, material and substantial evidence on the whole record.”<sup>249</sup> As a result, the Commission must base its conclusions on evidence in the record in the instant case and must explain its analysis to prove that it has reached a “reasoned opinion”<sup>250</sup> in its orders. The Court of Appeals of Michigan has also established that the Michigan APA applies to the Commission.<sup>251</sup> Thus, it would be unlawful for the Commission to issue an order that is not both supported by “substantial evidence”<sup>252</sup> and “reasoned.”<sup>253</sup>

To meet its statutory and constitutional obligations, the Commission must consider and respond to UCC’s evidence and legal arguments regarding affordability. The record demonstrates that Consumers’ low- and moderate-income customers currently experience unaffordable rates; the higher rates proposed by Consumers would make it even more difficult for customers to afford electricity and would exacerbate already extreme energy burdens.<sup>254</sup> Procedurally, if the Commission fails to consider UCC’s affordability evidence on the record, the Commission will be violating Michigan law, as the Michigan “APA requires that a ‘decision or order shall not be made

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<sup>246</sup> *Id.*

<sup>247</sup> MCL § 24.306(1)(e).

<sup>248</sup> MCL § 24.285.

<sup>249</sup> MI Const 1963, art 6, § 28, cl. 2.

<sup>250</sup> MCL § 24.285.

<sup>251</sup> *In re Application of Ind. Mich. Power Co. to Increase Rates*, 329 Mich. App. 397, 414 (Mich. Ct. App. 2019) (citing MCL 24.306(1)(e)).

<sup>252</sup> MI Const 1963, art 6, § 28, cl. 2.

<sup>253</sup> MCL § 24.285.

<sup>254</sup> *See supra* Section III.A.1.

except upon consideration of the record as a whole’ . . . .”<sup>255</sup> The Commission would be engaging in the rate-making process without the support of a fully “reasoned opinion”<sup>256</sup> or “substantial evidence.”<sup>257</sup> Under both the Michigan APA<sup>258</sup> and the Michigan Constitution,<sup>259</sup> the Commission cannot do this. The Commission must point to “material and substantial evidence”<sup>260</sup> and “adequate determining principles”<sup>261</sup> and “circumstances”<sup>262</sup> to support its conclusions. Otherwise, its decisions are arbitrary and capricious. As discussed below, the Commission could not make a “reasoned opinion” that granting Consumers’ requested rate increase would be “just and reasonable” based on the record presented in this case.<sup>263</sup>

**c. The Company Has Failed to Provide a Meaningful Analysis of Affordability for the Commission to Evaluate**

As discussed above, the Commission’s order must be supported by “substantial evidence”<sup>264</sup> and it must look to the on-the-record evidence. Consumers Energy has failed to conduct a relevant affordability analysis,<sup>265</sup> so it has provided little evidence on the record regarding affordability. In contrast, UCC has provided ample information regarding affordability in testimony that demonstrates the hardships that the Company’s customers face and analyzes the Company’s bill assistance offerings to show their insufficiency to meet the growing affordability crisis. Therefore, to comply with Michigan’s APA and the Michigan Constitution, the Commission

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<sup>255</sup> *Dep’t of Cmty. Health v. Risch*, 274 Mich. App. 365, 381 (Mich. Ct. App. 2007) (quoting MCL § 24.285; see also *Dignan v. Mich. Pub. Sch. Emps. Ret. Bd.*, 253 Mich. App. 571, 577 (Mich. Ct. App. 2002) (stating that agency decisions “must be based on the record as a whole”).

<sup>256</sup> MCL § 24.285.

<sup>257</sup> MI Const 1963, art 6, § 28, cl. 2.

<sup>258</sup> MCL § 24.285.

<sup>259</sup> MI Const 1963, art 6, § 28, cl. 2.

<sup>260</sup> *Id.*

<sup>261</sup> *Wescott*, 298 Mich. App. at 162.

<sup>262</sup> *Id.*

<sup>263</sup> MCL § 460.557(4).

<sup>264</sup> MI Const 1963, art 6, § 28, cl. 2.

<sup>265</sup> See *supra* Section III.A.6 (arguing that the Commission should order Consumers Energy to conduct a comprehensive affordability analysis using the Commission’s definition of affordability).

must address UCC’s provided information on affordability because it constitutes this case’s on-the-record evidence regarding affordability.

Consumers has failed to conduct an adequate affordability analysis.<sup>266</sup> In DTE Electric Rate Case Order No. U-21534, the Commission mandated that “utilities, including DTE Electric, use the definition of affordability approved [by the Commission] to ensure that the Commission may properly consider and decide issues regarding high energy burdens experienced by low-income and vulnerable customers.”<sup>267</sup> As described above, the Commission defined “energy affordability” as “the extent to which a household has the resources to meet their home energy needs . . . without compromising a household’s ability to meet other basic needs.”<sup>268</sup> While the Commission has not yet ordered Consumers to perform the same kind of analysis that it has ordered DTE to do, Consumers has failed to provide an analysis of affordability that uses the Commission’s definition, which is essential to determining if a rate increase would be just and reasonable. It has even failed to provide an affordability analysis at all. And in rebuttal testimony, Witness Myers stated that Witness Cira-Reyes did not provide enough detail to show how Consumers would perform such an analysis, claiming that “the Company is unsure of how the requested [affordability] analysis would be completed or if it would even be possible to complete.”<sup>269</sup> Despite this claim, the Company possesses data indicating that it is aware of individual customers’ ability to pay.<sup>270</sup> Consumers must assess whether customers are able to afford its rates, and it can use data in its possession, including its already existing internal classification of customers as “can’t pay” and

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<sup>266</sup> *See id.*

<sup>267</sup> *In re DTE Electric Co.*, MPSC Case No. U-21534, Order (Jan. 23, 2025), at 460–61.

<sup>268</sup> *In re MPSC*, MPSC Case No. U-20757, Order (Dec. 21, 2023), at 36.

<sup>269</sup> Myers Rebuttal Testimony at 3 TR 1848.

<sup>270</sup> *See supra* Section III.A.6 (discussing Consumers’ internal classification system of customers as “can’t pay” and “won’t pay”).

“won’t pay,”<sup>271</sup> or data that it can acquire. As described above, the Commission could give the Company some flexibility initially in conducting this analysis, ensuring the request is reasonable and feasible. The Company could, for example, use this existing data, look to the requirements of the DTE analysis, leverage analysis used by MPSC staff in assessing energy burdens in Staff’s Affordability Report,<sup>272</sup> and, within any parameters set forth by the Commission, assess whether customers can afford its electric rates.

In the instant case, the Company has failed to provide meaningful evidence or analysis of affordability, whereas UCC has provided significant information. In considering the record before it on the issue of affordability, the Commission must look to the evidence that speaks directly to the issue at hand. UCC’s witness testimony and analysis on affordability constitutes the on-the-record evidence that speaks to affordability in this case, and the Michigan Constitution requires the Commission’s order to be supported by “competent, material and substantial evidence on the whole record.”<sup>273</sup> Thus, if the Commission fails to consider UCC’s information and arguments on affordability, it will violate the Michigan Constitution by issuing an order that is not appropriately supported.

**d. Approving a Rate Increase Without Assessing Affordability Would Violate Michigan Law**

It is neither just nor reasonable to require households to take on additional debt, sacrifice other necessary household expenses, or incur additional healthcare costs to afford their energy bills. However, that is exactly what Consumers’ proposed 11% rate increase<sup>274</sup> will do.

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<sup>271</sup> *See id.*

<sup>272</sup> *See* Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 100.

<sup>273</sup> MI Const 1963, art 6, § 28, cl. 2.

<sup>274</sup> Connolly Direct Testimony at 3 TR 157.

The evidence paints a clear picture: the proposed rate increase would be disastrous for many Consumers customers. Consumers' requested rate increase would amount to more than double the 4.5% residential rate increase approved by the Commission in last year's rate case, U-21585.<sup>275</sup> The current rates are already unaffordable, so doubling already unaffordable rates would almost certainly result in increased energy burdens and increased shutoffs.<sup>276</sup> For example, the frequency of shutoffs is already problematic, as December 2024 Consumers disconnected 5,599 residential electric customers for non-payment, a 15% increase in shutoffs compared to December 2023.<sup>277</sup> The Company itself knows that its customers are challenged to pay their bills. Consumers Witness Byrom stated that 11% of the Company's customers are "in crisis and unable to pay their energy bill"<sup>278</sup> and another 26% of their customers are "one crisis away from being able to pay their energy bill."<sup>279</sup> Thus, the data clearly demonstrates that a rate increase would make rates unaffordable for many more households, worsening shutoff rates and exacerbating the affordability crisis.

As explained at length above, members of the community are expressing serious concerns about the affordability crisis affecting Consumers Energy's customers.<sup>280</sup> According to Witness Williams, "[b]ased on her community work, Consumers Energy's rates are already unaffordable

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<sup>275</sup> Cira-Reyes Direct Testimony at 3 TR 2305 (citing Myers Direct Testimony at 3 TR 1808).

<sup>276</sup> Cira-Reyes Direct Testimony at 3 TR 2305 ("This requested rate increase is likely to exacerbate shutoffs and disconnections by making rates more unaffordable at a time when economic conditions are difficult and deteriorating.").

<sup>277</sup> Cira-Reyes Direct Testimony at 3 TR 2305–06 (citing *In re MPSC*, MPSC Case No. U-20757, Consumers Energy Company's December 2024 Report on Disconnected Service to Occupied and Unoccupied Residences (Jan. 13, 2025), at 2; *In re MPSC*, MPSC Case No. U-20757, Consumer's Energy Company December 2023 Report on Disconnected Service to Occupied and Unoccupied Residences (Jan. 10, 2024), at 2).

<sup>278</sup> Byrom Direct Testimony at 3 TR 967.28–29.

<sup>279</sup> *Id.* at 3 TR 967.29.

<sup>280</sup> *See supra* Section III.A.1 (discussing the affordability crisis in Consumers' service territory).

for thousands of families.”<sup>281</sup> She “regularly help[s] families who are behind on their bills, facing shutoffs, and making impossible choices between utilities and other basic needs.”<sup>282</sup>

Approving a rate increase in this case would be “[a]rbitrary, capricious or clearly an abuse of unwarranted exercise of discretion.”<sup>283</sup> UCC has effectively demonstrated that Consumers’ territory is in the midst of an affordability crisis.<sup>284</sup> Evidence in the record shows that many Consumers customers cannot afford Consumers’ current rates, let alone even higher rates. Thus, a rate increase will be unaffordable. The Company has not presented “substantial evidence on the whole record” that reasonably supports a rate increase that customers cannot afford.<sup>285</sup> Because affordability is a central concern in determining whether rates are just and reasonable, if the Commission properly balances interests, it will not approve the Company’s requested rate increase.

**e. The Efforts of the Energy Affordability and Assistance Collaborative (EAAC) Do Not Absolve the Commission from Considering Affordability in Rate Cases.**

The Commission’s EAAC has failed to take sufficient action to ensure the affordability of energy.

Established through various orders, including those in Case No. U-20757 and Case No. U-20929, the EAAC was to serve as a facilitator for improving assistance programs and encouraging transparent reporting.<sup>286</sup> The establishment of the EAAC showed that the Commission recognized growing affordability issues and created a mechanism for addressing them; however, the EAAC has wholly failed to fulfill this mandate. Thus, the Commission must also take action in light of the EAAC’s repeated inadequacies.

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<sup>281</sup> Williams Direct Testimony at 3 TR 2401.

<sup>282</sup> *Id.*

<sup>283</sup> MCL § 24.306(1)(e).

<sup>284</sup> *See supra* Section III.A.1 (discussing the affordability crisis in Consumers’ service territory).

<sup>285</sup> MI Const 1963, art 6, § 28, cl. 2.

<sup>286</sup> *See generally* Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025)).

At times, the EAAC has served more as a mechanism for debating definitions than for helping ratepayers secure timely and needed relief. The EAAC took a “full year to propose a simple definition of energy security.”<sup>287</sup> This timeline is unacceptably slow and impedes substantive work. For instance, the EAAC’s “Customer Focused Data and Metrics” subcommittee at one point “decided to suspend its work until the definitions subcommittee had produced definitions.”<sup>288</sup> While definitions are important, they do little to provide relief for customers who are actively experiencing energy insecurity.

Conversely, the MPSC Staff views the EAAC and its Affordability, Alignment, and Assistance Subcommittee (AAA) as having adequately accomplished directives from the Commission regarding affordability and takes the position that affordability of rates for individual ratepayers is not a factor to be considered in ratemaking.<sup>289</sup> In its Energy Affordability Report filed in MPSC Case No. U-20757, the MPSC Staff stated that, to accomplish its directives, the AAA subcommittee and Staff “employed a variety of tools to collect feedback and determine which recommendations to bring before the Commission,” which led to Staff-led discussions that “shaped the recommendations in this report and added depth to this discourse.”<sup>290</sup>

Despite these claims, as discussed above, the EAAC has failed to produce tangible results that the Commission can use to move forward on affordability. Regarding affordability being a consideration in rate cases, the MPSC Staff stated that, in ratemaking, “[r]easonable cost and value are relevant facts; whereas, the Commission and Michigan appellate courts do not consider individual ratepayers ability to pay” and that “based on the evidence presented by all parties in a

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<sup>287</sup> *In re MPSC*, MPSC Case No. U-20757, Report from Staff on activities of the EAAC (Dec. 26, 2024), at 23.

<sup>288</sup> *Id.*

<sup>289</sup> Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 12–16, 18.

<sup>290</sup> *Id.* at 15–16.

rate case, the Commission is obliged to allow just and reasonable rates, even if those rates may be difficult for some customers to afford.”<sup>291</sup> However, as discussed above, Michigan courts have established that the Commission must undertake a “comprehensive examination of all factors involved”<sup>292</sup> and must “balanc[e] the interest of public utility investors and the consuming public” in setting “a just and reasonable rate,”<sup>293</sup> so it must consider customers’ ability to pay when setting rates.

In sum, though the EAAC was created to address the growing affordability crisis, the EAAC has not fulfilled its assignment, and the affordability crisis has only continued to worsen. The EAAC has moved slowly while customers have sacrificed basic necessities and suffered repeated life-endangering shutoffs. Ultimately, this has impeded the adoption, implementation, and expansion of programs that would meet people’s needs better than the existing flawed programs. Given the legal requirement to consider affordability in the instant rate case, and the failure of the EAAC to make any meaningful progress on its mandate, the Commission must itself consider affordability when considering requested rate increases and step in to correct the failures of the EAAC.

In order to sufficiently address affordability issues, it is therefore also appropriate and necessary for the Commission to address Consumers Energy’s discontinuation of the PIPP pilot program in the instant case. Rate assistance programs are central to LMI customers’ ability to afford their utility bills. The Commission cannot assess affordability, or whether Consumers’ proposed rate increase is “just and reasonable” without first considering the efficacy of all payment assistance programs, including the PIPP pilot, in the present case.

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<sup>291</sup> *Id.* at 18.

<sup>292</sup> *In re Consumers Energy Co.*, 322 Mich. App. at 487.

<sup>293</sup> *City of Detroit*, 308 Mich. at 716–17.

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As described above, Michigan courts have held that when determining if a rate is “just and reasonable,” the Commission must make “a *comprehensive* examination of *all factors* involved” in order to “balance[e] . . . investor *and* consumer interests.”<sup>294</sup> The Commission cannot determine whether the rate increase requested in the present case is “just and reasonable” without viewing the totality of the circumstances. Affordability programs offered by the Company, their responsiveness – or lack thereof – to the ongoing affordability crisis, especially for LMI customers, and the efficacies of these programs are directly relevant to a core issue in these rate cases. To comply with its legal requirements as set forth above, Commission must consider these issues in the instant case.

In sum, the Commission should:

- (1) Consider affordability in rate cases, including this rate case, in recognition of its obligations under Michigan law;
- (2) Order Consumers to conduct a comprehensive affordability analysis incorporating the Commission’s definition of energy affordability every time the Company requests a rate increase;
- (3) Address Consumers’ discontinuation of the PIPP pilot program in the instant case, and order the Company to implement a long-term PIPP for LMI customers; and
- (4) Approve only the lowest possible ROE.

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<sup>294</sup> *Ass’n of Bus. Advocating Tariff Equity*, 208 Mich. App. at 267 (emphasis added).

**B. Customers Pay Too High a Price for Unreasonably Unreliable Power.** (*Issue III.A.1. Distribution Capital Expenditures*)<sup>295</sup>

Despite charging unaffordable rates, the Company delivers service that consistently falls short of both regulatory benchmarks and customer expectations. In addition, the Company's crediting system does not account for the full costs that customers bear due to unreliable power.

As discussed in further detail in Section A, Consumers' rates fail the Commission's own affordability definition,<sup>296</sup> which requires that households can meet energy needs "without compromising a household's ability to meet other basic needs."<sup>297</sup> When frequent, prolonged outages impose hundreds of dollars in additional costs<sup>298</sup> on customers already struggling with unaffordable base rates, the compounded burden is insurmountable.

Customers do not have sufficiently reliable service. An independent audit conducted by The Liberty Consulting Group placed Consumers within the fourth quartile of utility companies for average outage duration, meaning that at least 75% of utilities provide more reliable power.<sup>299</sup> In addition, it found that in 2023, "more than 10 percent of Consumers' customers experienced four or more interruptions and more than 25 percent of its customers experienced interruptions greater than eight hours."<sup>300</sup> Witness Cira-Reyes testified that he regularly hears from Consumers

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<sup>295</sup> UCC believes the following are relevant to this issue:

Relevant Testimony: Cira-Reyes Direct Testimony at 3 TR 2322–26; Williams Direct Testimony at 3 TR 2384–88; Kelly Rebuttal Testimony at 3 TR 1617-19.

Other Relevant Authorities: *In re Response to COVID-19*, MPSC Case No. U-20757; *In re DTE Electric Co. & Consumers Energy Co.*, MPSC Case No. U-21305 Consumers Energy Report Part One (Sep. 23, 2024).

<sup>296</sup> *Supra* Section III.A.

<sup>297</sup> *In re MPSC*, MPSC Case No. U-20757, Order (Dec. 21, 2023), at 36.

<sup>298</sup> *See, e.g.*, Williams Direct Testimony at 3 TR 2385–86.

<sup>299</sup> Cira-Reyes Direct at 3 TR 2322; *In re DTE Electric Co. & Consumers Energy Co.*, MPSC Case No. U-21305, Consumers Energy Report Part One (Sep. 23, 2024), at 4–5.

<sup>300</sup> *Id.* at 5.

customers, particularly those from low-income and/or BIPOC communities, who have experienced service outages lasting anywhere from hours to days.<sup>301</sup>

Poor reliability imposes severe harms and costs on vulnerable communities. These consequences take at least three forms: difficulty meeting medical needs, additional costs to replace basic necessities, and unsafe temperatures.

First, unreliable electric service can create life-threatening risks for customers with medical needs. Witness Williams testified that her daughter has severe asthma and relies on a nebulizer when her asthma flares up, but during power outages, the nebulizer cannot be used.<sup>302</sup> Her daughter’s asthma medication also requires refrigeration, and when the power goes out, Williams cannot keep the medicine cold.<sup>303</sup> She has “worried all through her life about what would happen if my daughter had a medical need while the power was out,” explaining that she tries to plan but cannot prepare for the worst-case scenario, making each outage “a stressful and difficult experience.”<sup>304</sup> Each outage costs her \$200 per dose for refrigerated asthma medication that must be replaced, and Medicaid rarely covers replacements absent a life-or-death situation.<sup>305</sup> These health risks are not isolated: power outages cause detrimental health impacts on vulnerable communities, and the Liberty Consulting Group audit found that Consumers’ number of customers that have “experienced four or more outages for more than 5 minutes” and “customers that have experienced one or more outages longer than eight hours” are “greater than usually acceptable.”<sup>306</sup> These extended durations compound medical challenges.

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<sup>301</sup> Cira-Reyes Direct Testimony at 3 TR 2322.

<sup>302</sup> Williams Direct Testimony at 3 TR 2385.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> *In re DTE Electric Co. & Consumers Energy Co.*, MPSC Case No. U-21305, Consumers Energy Report Part One (Sep. 23, 2024), at 5.

Second, power outages deprive customers of basic necessities, imposing substantial financial costs on those least able to afford them. Witness Williams testified that when the power goes out, she loses all her refrigerated food, which is expensive.<sup>307</sup> Each outage costs her between \$300 and \$400 in spoiled food from her full refrigerator and freezer containing a month’s worth of groceries.<sup>308</sup> The unreliable service forces Williams to shop for groceries in smaller quantities more frequently to minimize potential losses, which is more expensive than buying in bulk and requires additional spending on gas for frequent trips.<sup>309</sup> As noted in Witness Cira-Reyes’s testimony, power outages can cause health impacts and financial strain, and frequently lead to food and medicine spoilage, hotel stays, and home repairs, all of which increase costs for impacted customers.<sup>310</sup> These outages occur repeatedly and for meaningful durations: Williams has experienced three outages in the last year alone.<sup>311</sup> The Liberty Consulting Group audit found that in 2023, more than ten percent of Consumers’ customers experienced four or more interruptions, and more than twenty-five percent experienced interruptions greater than eight hours.<sup>312</sup>

Third, power outages during extreme temperatures create dangerous conditions, particularly for vulnerable customers who lack the resources to cope. Witness Williams testified that during the power outage last winter, she called the twenty-four-hour emergency phone number because she “was very worried about being without power for a long time during the winter” when

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<sup>307</sup> Williams Direct Testimony at 3 TR 2385–86.

<sup>308</sup> *Id.* at 3 TR 2385.

<sup>309</sup> *Id.* at 3 TR 2386.

<sup>310</sup> Cira-Reyes Direct at 3 TR 2322–23; Ex. UCC-49, Joan A. Casey et al., *Power Outages and Community Health: A Narrative Review*, 7 CURRENT ENV’T HEALTH REPS. 371 (2020), at 6–9; Ex. UCC-50, Patrick Madamba, *How Do Power Outages Affect Households?*, U.S. CENSUS BUREAU (Oct. 2, 2024), at 3.

<sup>311</sup> Williams Direct Testimony at 3 TR 2384.

<sup>312</sup> *In re DTE Electric Co. & Consumers Energy Co.*, MPSC Case No. U-21305, Consumers Energy Report Part One (Sep. 23, 2024), at 5.

“it was very cold.”<sup>313</sup> Williams cannot afford a generator, and even if she could, she would not be able to maintain and operate one independently.<sup>314</sup> None of her close friends or family members has a generator either, leaving her with nowhere to go during outages.<sup>315</sup> During the COVID-19 pandemic, people were no longer able to go and stay with others during power outages, forcing Williams and other community members to “strategize other ways of getting by,” such as using a deep freezer as an ice chest and hoping “that the ice does not all melt before the power comes back on.”<sup>316</sup> Witness Williams further describes the challenges she has faced in receiving information from Consumers that would help her manage outages: “[e]very time [she] call[s], [she] listens to the same recorded message which states that Consumers Energy is aware of the outage and lists a few generic and unhelpful safety tips. . . [I]f the power is out after a long time, . . . [u]sually, when [she] call[s], they tell [her] the cause of the outage, but they cannot tell [her] how long they expect the outage to last.”<sup>317</sup>

These substantial and compounded costs to vulnerable customers underscore the importance of outage credits, yet low-income customers have concerns regarding transparency and the sufficiency of those credits. Witness Williams testified that she has never received information from Consumers Energy about outage credits nor does she understand how they are applied to her bill.<sup>318</sup> Moreover, unlike customers who may have more resources to manage the diverse and significant impacts of an outage, low-income households are unable to address these challenges as

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<sup>313</sup> Williams Direct Testimony at 3 TR 2387–88.

<sup>314</sup> *Id.* at 3 TR 2385.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* at 3 TR 2387.

<sup>317</sup> *Id.* at 3 TR 2388.

<sup>318</sup> *Id.* at 2386.

easily or at all.<sup>319</sup> Even if Witness Williams received credits, they may not significantly offset the \$300 to \$400 in spoiled food and expensive refrigerated medications she loses with each outage.<sup>320</sup>

Therefore, UCC requests that the Commission

- 1) Require the Company to (a) proactively notify all customers of their right to receive outage credits; and (b) provide customers with an explanation of how outage credits are calculated and applied.
- 2) Revisit the amount paid as outage credits, to ensure credits align with actual costs incurred by customers such as Witness Williams.

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<sup>319</sup> Cira-Reyes Direct at 3 TR 2322–23; Ex. UCC-49, Joan A. Casey et al., *Power Outages and Community Health: A Narrative Review*, 7 CURRENT ENV'T HEALTH REPS. 371 (2020), at 6–9; Ex. UCC-50, Patrick Madamba, *How Do Power Outages Affect Households?*, U.S. CENSUS BUREAU (Oct. 2, 2024), at 3 (stating that power outages frequently lead to food and medicine spoilage, hotel stays, and home repairs, all of which increase costs for impacted customers).

<sup>320</sup> Williams Direct Testimony at 3 TR 2385–86.

**C. The Company’s Shutoff Practices are Impacting Racial Minority Customers Disproportionately.** (*Issue VIII.E. Disconnection Regression Analysis*)<sup>321</sup>

Pursuant to the Commission’s directive in Case No. U-21585, the Company conducted a regression analysis that revealed an alarming pattern of racial disparities in residential shutoff rates.<sup>322</sup> The assessment found a statistically significant relationship between the percentage of the minority population in an area and shutoff rates that was not explained by other factors.<sup>323</sup> The Company did not provide an explanation for the racial disparities shown in their regression analysis. This finding should have prompted immediate action on the part of Consumers to develop a mitigation plan to address these unjustified impacts. Instead, the Company has offered to conduct further analysis while continuing to shut off minority customers disproportionately.<sup>324</sup> The Commission should order Consumers to halt shutoffs until it addresses these disparities.

In particular, the analysis found that “[i]ncreasing [m]inority [p]opulation [p]ercentage in a census tract is statistically significantly correlated with increasing disconnection rates, *even when [p]ercentage [b]elow [p]overty and [u]nemployment [r]ate are included in the model.*”<sup>325</sup> Specifically, a one percentage-point increase in minority population is associated with an increase of 1.001 disconnections per 1000 households, while a one percentage-point increase in below poverty population is associated with an increase of only 0.634 disconnections per 1000 households.<sup>326</sup> This means that racial disparities in shutoffs cannot be attributed solely to economic factors.

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<sup>321</sup> UCC believes the following are relevant to this issue:

Relevant Testimony: Cira-Reyes Direct Testimony at 3 TR 2326–30; Byrom Direct Testimony at 3 TR 967.48–49; Byrom Rebuttal Testimony at 3 TR 967.75–79; Tan Direct Testimony at 4 TR 3232–38; Kelly Direct Testimony at 3 TR 1444-1452; Kelly Rebuttal Testimony at 3 TR 1617–19.

<sup>322</sup> Byrom Direct Testimony at 3 TR 967.48.

<sup>323</sup> Cira-Reyes Direct at 3 TR 2328; Byrom Direct Testimony at 3 TR 967.48.

<sup>324</sup> Byrom Direct Testimony at 3 TR 967.49.

<sup>325</sup> Ex. A-138 at 34 (emphasis added).

<sup>326</sup> *Id.* at 33.

The Company offers two primary arguments in response to these findings. First, the Company argues that racial bias is not the cause of the higher rates of disconnections for BIPOC customers compared to comparable non-BIPOC customers. Witness Byrom states that “at this point in [the Company’s] analysis there may well be a racial component to the Company’s shutoff rates, but there is no racial bias, and certainly no purposeful bias.”<sup>327</sup> Second, Witness Byrom argued that there can be no racial bias because employees processing disconnections only see account numbers, not customer names or addresses; therefore, disconnection disparities along racial lines cannot be a result of discriminatory animus beyond “groundless speculation.”<sup>328</sup>

Critically, MCL § 460.557 requires that the rates of an electric utility shall be “just and reasonable” and that “a consumer shall not be charged more or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions.”<sup>329</sup> The Company’s practices fail the reasonableness standard of MCL § 460.557 on two independent grounds. First, the practices produce demonstrable racial disparities in shutoff rates. Racial disparities are inherently unreasonable because they affect access to essential utility services. Second, the Company has not provided any evidence that these disparate outcomes are justified by legitimate, non-discriminatory factors. If a utility’s practices produce differences in service, at the same price to the customer, due to arbitrary racial disparities, the utility will have violated the “just and reasonable” standard.

While the Company states that it is taking some steps to address the disparities, it needs to act with greater speed. In her Rebuttal Testimony, Witness Byrom offers to “stand[] up a cross-functional team” to examine these issues.<sup>330</sup> In discovery, the Company stated it planned to

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<sup>327</sup> Byrom Rebuttal Testimony at 3 TR 967.76.

<sup>328</sup> *Id.*

<sup>329</sup> MCL § 460.557.

<sup>330</sup> Byrom Rebuttal Testimony at 3 TR 967.77.

complete its “problem-solving process” by September 24, 2025,<sup>331</sup> but then in rebuttal Witness Bryom stated that “[w]hile the Company originally committed to completing its assessment in September 2025, the timeline has been expanded to December 31, 2025, to allow for additional input and analysis.”<sup>332</sup> In the meantime, however, the Company has not changed or committed to change the policies and practices that have led to racial disparities in shutoffs. Even if the Company thoroughly identifies and addresses the issue by the end of 2025, which is by no means assured, BIPOC customers may experience months of unreasonable and unjust shutoffs. While the Company conducts its “problem-solving process,” the Company should halt discriminatory shutoff practices while it develops and implements a comprehensive investigation and remedial plan.

Because the Company has not stopped these practices, the only solution to ensure that racially-disparate shutoffs do not occur during a period of investigation and proposal for corrective action is for the Commission to issue a shutoff moratorium. Such a moratorium would ensure that no persons are shut off while the Company identifies the root cause of the problem and takes action to address it.

The Company’s arguments against a shutoff moratorium are insufficient and do not offer any suitable alternative. The Company opposes a shutoff moratorium, claiming it “would have a negative effect on all customers, with associated cost and cost recovery compromised”<sup>333</sup> and that a disconnection moratorium “would not stop customers from accruing bills and could put customers in a position for their energy bills to become unaffordable due to past due balance.”<sup>334</sup> However, customers who are more likely to be shut off because of their race are also experiencing

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<sup>331</sup> Ex. UCC-51, Consumers Electric’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0233, at 3.

<sup>332</sup> Byrom Rebuttal Testimony at 3 TR 967.77.

<sup>333</sup> *Id.* at 967.79.

<sup>334</sup> *Id.*

“negative effect[s].” If the Company is concerned about unpaid balances due to a shutoff moratorium, it could and should take additional measures, such as implementing a payment plan that forgives arrears, to address these potential secondary impacts. If the Company is concerned about impacts to its own financial health, the Commission ultimately allows the Company to charge uncollected bills to the rate base,<sup>335</sup> so the Company would not suffer financially over the long term.

In sum, the Commission must address the racially-disparate outcomes in Consumers’ shutoffs. Racially disparate service provision cannot be considered just and reasonable. The Commission need not, and indeed should not, wait to address practices that produce racially discriminatory outcomes. The statute’s reasonableness requirement demands Commission intervention.

UCC requests that the Commission require the Company to cease all shutoffs until it can determine why BIPOC customers are experiencing increased shutoff rates and implement measures to prevent racially-disparate impacts.

[The next section starts at the top of the next page]

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<sup>335</sup> See Ex. A-13, lines 20 and 25 (showing “uncollectible expense” being added to operation and maintenance expenses).

#### **D. Consumers Energy’s Failure to Address Reliability Has Disproportionately Impacted Some Environmental Justice Communities.<sup>336</sup>**

Some environmental justice (“EJ”) communities<sup>337</sup> in Michigan face documented disparities in electric service reliability.<sup>338</sup> In Case No. U-21585, Company Witness Kelly presented analysis demonstrating that EJ census tracts “often perform worse on key reliability metrics” compared to similar non-EJ census tracts.<sup>339</sup> Despite some methodological flaws and conflicting results, the Company’s recent regression analysis also shows material reliability inequities affecting some EJ communities.<sup>340</sup>

While Consumers Energy has proposed positive steps to address these disparities, the Company can and should do more—and with greater urgency—to address these inequities. The Company’s \$600 million Vulnerable Communities Resiliency Plan (VCRP) will invest

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<sup>336</sup> UCC believes the following are relevant to this issue:

Relevant Testimony: Cira-Reyes Direct Testimony at 3 TR 2339–46, 2296–2305, 2322; Kenworthy Direct Testimony at 4 TR 3200–03, 3206–14; Shaver Direct Testimony at 4 TR 3251–64; Boehnke Direct Testimony at 4 TR 3274–3330; Kelly Direct Testimony at 3 TR 1381, 1390–92, 1441–57; Kelly Rebuttal Testimony at 3 TR 1617–22; McPhail Direct Testimony at 3 TR 1657, 1712–16, 1724–25; McPhail Rebuttal Testimony at 3 TR 1747–53; Tan Direct 6 TR 3227–32; Myers Direct Testimony at 3 TR 1820–21; Partlan Revised Direct Testimony at 3 TR 1925–26, 1979–81; Snider Revised Direct Testimony at 3 TR 2126–29; Williams Direct Testimony at 3 TR 2381, 2389, 2392–95; Byrom Rebuttal Testimony at 3 TR 967.70–7; Walters Direct Testimony at 6 TR 3762–63; Bunch Revised Direct Testimony at 6 TR 4068–71; Fleck Direct Testimony at 4 TR 3188–91.

Other Relevant Authorities: Mich. Admin. Code r. 460.101(2) (2017); *In re Consumers Energy Co.*, MPSC Case No. U-21585; *In the matter of the application of Consumers Energy Company for approval of Voluntary Green Pricing programs*, MPSC Case No. U-21972; *In re MPSC Regarding Extreme Weather Condition Policies Filed in Compliance with Michigan Administrative Code R 460.134*, MPSC Case No. U-20140; *In re Response to COVID-19 Pandemic*, MPSC Case No. U-20757.

<sup>337</sup> Using the Michigan Environmental Justice Screen (MIEJ Screen) tool, the Company defines EJ communities as census tracts with a MIEJ Screen composite score at or exceeding the 80<sup>th</sup> percentile. Cira-Reyes Direct Testimony at 3 TR 2323. These communities are further characterized by socioeconomic vulnerabilities. *See id.* at 3 TR 2325. Unreliable power can have a disproportionate impact on EJ communities, including due to effects on food, medicine, and other factors. *See id.* at 3 TR 2335.

<sup>338</sup> Kelly Direct Testimony at 3 TR 1444.

<sup>339</sup> *In re Consumers Energy Co.*, MPSC Case No. U-21585, Kelly Rebuttal Testimony (Nov. 5, 2024), at 5 TR 1016.

<sup>340</sup> Kelly Rebuttal Testimony at 3 TR 1619.

significantly in these communities to address these issues, with the vast majority of these investments incremental to the Company’s existing plans<sup>341</sup> and with the goal of achieving equity in reliability for EJ communities within ten years.<sup>342</sup> UCC appreciates the Company’s plans to make substantial incremental investments in EJ communities to address reliability disparities. In addition, the Company can and should take further steps to address inequities. First, the Company should supplement its current regression analysis with a like-versus-like analysis. The Company should also provide detailed implementation plans for the VCRP that enable more stakeholder input and Commission oversight. Equally important, the Company should facilitate increased deployment of distributed energy resources (“DERs”) and community solar in EJ communities, ensuring that these neighborhoods are not left behind as Michigan’s energy system evolves. The Company should revise its disconnection policies so that no customer, and especially no EJ customer, suffers harm from a shutoff during extreme heat events. Finally, the Company should update its current public-facing GIS maps in order to both comply with the Commission’s past order and to ensure that this information is accessible to the public.

**1. The Company Should Supplement Its Regression Analysis with a Like-Versus-Like Analysis.** (*Issue VIII.B. Distribution System Planning and Analysis*)

Flaws in the Company’s regression analysis, completed in response to the Commission’s directive in U-21585,<sup>343</sup> may lead to incorrect conclusions being drawn about whether EJ communities experience worse reliability compared to non-EJ communities.<sup>344</sup> The Company’s

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<sup>341</sup> Kelly Direct Testimony at 3 TR 1444–45.

<sup>342</sup> Cira-Reyes Direct Testimony at 3 TR 2323 (citing *In re Consumers Energy Co.*, MPSC Case No. U-21585, Kelly Rebuttal Testimony (Nov. 5, 2024), at 5 TR 1016-1018.).

<sup>343</sup> Cira-Reyes Direct Testimony at 3 TR 2324, 2326 (citing *In re Consumers Energy Co.*, MPSC Case No. 21585, Order (Mar. 21, 2025), at 436.).

<sup>344</sup> *See generally* Kelly Rebuttal Testimony at 3 TR 1607 (“[t]he reliability-related portions of the regression analysis were designed to . . . [q]uantify differences in the experiences of two groups of customers – those in EJ census tracts and those outside of them”).

“more nuanced” analysis revealed worse reliability outcomes in some EJ areas.<sup>345</sup> In addition, Witness Kelly concedes in his testimony that the regression analysis also found “instances where increasing poverty levels and increasing unemployment rates are correlated with worsening reliability”<sup>346</sup> and “where circuits serving EJ census tracts are more likely to experience customer interruptions.”<sup>347</sup> The analysis itself notes these discrepancies and suggests they “may warrant further study.”<sup>348</sup> This seems to contradict directly Kelly’s statement that “[t]here is nothing apparently systemic or unique about EJ census tracts”<sup>349</sup> that leads to worse reliability outcomes.

Regression analysis is, in general, a useful tool because it helps to understand the relationship between the dependent variable and the independent variables.<sup>350</sup> In this case, the dependent variables are reliability metrics, and the independent variables include characteristics of the grid and demographic information of electric customers.<sup>351</sup>

Witness Kelly acknowledges the first flaw in the Company’s regression analysis: the simplicity of using a binary difference-in-means t-test.<sup>352</sup> Consumers’ systemwide comparisons of EJ and non-EJ, low-income and high-income, and high percent-minority and low-percent-minority census tracts is problematic.<sup>353</sup> It does not “appear to account for population density, meaning that while there is no difference at the categorical level, there could be a difference if one takes into account the number of people affected.”<sup>354</sup> Additionally, urban areas generally have higher reliability, on the whole, than rural areas, and EJ communities are predominantly located in urban

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<sup>345</sup> Kelly Rebuttal Testimony at 3 TR 1619.

<sup>346</sup> Kelly Direct Testimony at 3 TR 1449.

<sup>347</sup> *Id.*

<sup>348</sup> *Id.*, Ex. A-135 (MPL-25), at 14.

<sup>349</sup> Kelly Direct Testimony at 3 TR 1450.

<sup>350</sup> Tan Direct Testimony at 4 TR 3232.

<sup>351</sup> *Id.*

<sup>352</sup> Kelly Rebuttal Testimony at 3 TR 1618.

<sup>353</sup> Cira-Reyes Direct Testimony at 3 TR 2327.

<sup>354</sup> *Id.*

areas.<sup>355</sup> The Company’s analysis comparing urban EJ communities to rural non-EJ communities may be concluding, erroneously, that EJ areas are reliable, when in reality, the analysis is simply confirming the previously understood urban-rural divide in reliability. Witness Kelly does not address this underlying fact that could fundamentally impact the results of the regression analysis.

A proper community-based, like-versus-like analysis would compare EJ communities to similarly-situated non-EJ communities, that is, urban to urban and rural to rural. Without controlling for urbanization, the Company’s conclusion that there are no systemic reliability issues in EJ communities may be unfounded.

The Commission should require the Company to undertake further study. Witness Kelly himself acknowledges that the issues identified in the regression analysis warrant further interrogation.<sup>356</sup> Where the analysis ordered by the Commission in U-21585<sup>357</sup> reveals disparities or contradictory claims and data, the Commission should direct the Company to improve the analysis.

**2. The Vulnerable Communities Resiliency Plan Is an Important Start to Addressing Reliability in EJ Communities, But the Company Should Provide More Concrete Implementation Plans.** (*Issue VIII.A. Distribution Investment Recovery Mechanism, VIII.B. Distribution System Planning and Analysis*)

In U-21585, the Commission conditionally accepted the Company’s \$600 million Vulnerable Communities Resiliency Plan (“VCRP”) based on the Company providing “[a] more detailed version, with specific proposed investments” in this rate case.<sup>358</sup> The Company has

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<sup>355</sup> Cira-Reyes Direct Testimony at 3 TR 2327; *In re Consumers Energy Co.*, MPSC Case No. U-21585, Kelly Rebuttal Testimony (Nov. 5, 2024), at 5 TR 1011, 1016 (discussing the Company’s own study that revealed this disparity in reliability when urbanization is controlled for); Kelly Direct Testimony at 3 TR 1444 (reaffirming the continued validity of that study).

<sup>356</sup> See Kelly Rebuttal Testimony at 3 TR 1619. (“The issues identified in the regression analysis warrant further study”).

<sup>357</sup> *In re Consumers Energy Co.*, MPSC Case No. U-21585, Order (Mar. 21, 2025) [hereinafter U-21585 Order] at 375.

<sup>358</sup> *Id.*

accordingly provided a list of proposed investments, totaling \$30 million, for the test year period ending April 30, 2027.<sup>359</sup> Witness Kelly, in rebuttal testimony, explains further that the Company proposes investing \$20 million in 2026, \$40 million in 2027, and \$67.5 million annually from 2028 through 2035.<sup>360</sup> The Company explains the ramp-up in investment by saying that it needs time to develop expertise with “new types” of projects and seeks to proceed cautiously before scaling-up.<sup>361</sup>

While these spending projections for years beyond the test year are a start, the Company should provide more detailed implementation plans, as the Commission ordered,<sup>362</sup> for meaningful stakeholder engagement and Commission oversight. Witness Kelly’s testimony points to the specific projects for the test year,<sup>363</sup> and his rebuttal testimony provides some helpful additional information about the Company’s approach to the VCRP,<sup>364</sup> but they are not enough. For a plan of this magnitude and importance, the Commission and stakeholders alike require sufficient information to provide thoughtful input on deployment strategies, project prioritization, and community impact.<sup>365</sup> A community-focused plan necessitates a collaborative approach to ensure that these important investments deliver concrete reliability improvements to the communities that need them the most. A gradual start with a ramp-up in investment after the test year does not preclude detailed planning for the deployment of the remaining \$570 million beyond the \$30 million detailed in the Company’s initial application. Moreover, funds should be deployed more

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<sup>359</sup> Kelly Direct Testimony at 3 TR 1446 (citing Ex. A-167 at 22); *see also* Kelly Rebuttal Testimony at 3 TR 1606 (“with the \$30 million test year amount derived from the test year overlap between 2026 and 2027”).

<sup>360</sup> Kelly Rebuttal Testimony at 3 TR 1606.

<sup>361</sup> *Id.* at 3 TR 1606.

<sup>362</sup> U-21585 Order at 375.

<sup>363</sup> Kelly Direct Testimony at 3 TR 1446 (citing Ex. A-167 at 22).

<sup>364</sup> Kelly Rebuttal Testimony at 3 TR 1606.

<sup>365</sup> Cira-Reyes Direct Testimony at 3 TR 2329.

rapidly, on an accelerated timeline that reflects the urgency of the reliability crisis harming EJ communities documented in the record.

For the above reasons, the Commission should require that Consumers provide a more detailed plan for the ten-year VCRP. This plan should include specific investments as currently intended, an accelerated timeline relative to current planning, and performance metrics.

**3. Consumers Should Do More to Facilitate the Deployment of DERs in Environmental Justice Communities.** (*Issue III.A.1. Distribution Capital Expenditures, VIII.B. Distribution System Planning and Analysis, VIII.H. Virtual Power Plants*)

Environmental justice communities could gain significantly from the deployment of distributed energy resources (DERs). As explained in further detail below, DERs, including but not limited to community solar, provide critical resilience during outages, reduce system costs, and enhance reliability—benefits that are particularly valuable in EJ communities that experience disproportionate service disruptions.<sup>366</sup>

The Company could do more to assist EJ communities in accessing these benefits. While the Company has taken an important step by releasing more detailed Phase II Hosting Capacity Analysis maps,<sup>367</sup> the Company needs to invest in portions of the grid that limit EJ communities' abilities to deploy DERs.<sup>368</sup> Second, the Company has not yet facilitated the development and deployment of community-owned community-solar.<sup>369</sup> While the details of the Company's latest specific proposal are being litigated in Case No. U-21972, it is nonetheless important for the Commission to bear in mind the impacts and lost opportunities for reliability and affordability due to the Company's insufficient community solar policies and programs to date.

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<sup>366</sup> Cira-Reyes Direct Testimony at 3 TR 2341.

<sup>367</sup> Kelly Direct Testimony at 3 TR 1443.

<sup>368</sup> Cira-Reyes Direct Testimony at 3 TR 2342.

<sup>369</sup> *Id.* at 3 TR 2344.

**a. EJ Communities Benefit from DERs.**

DERs provide significant benefits to environmental justice communities. DERs are a more resilient form of energy, which means DERs can enable critical services to remain open during outages.<sup>370</sup> These additional resources are even more critical in EJ communities that are disproportionately affected by outages.<sup>371</sup> Beyond resilience, DERs can lower electricity bills for customers, enable community ownership models that keep economic benefits local, and create opportunities for households to participate in energy markets.<sup>372</sup>

Aggregations of DERs offer benefits that exceed those provided by individual installations. For example, the implementation of a Virtual Power Plant (VPP) program has the potential to deliver significant value to residential customers by reducing system costs and enhancing reliability.<sup>373</sup> In his testimony on behalf of the Clean Energy Organizations, Witness Kenworthy explains how VPPs aggregate DERs such that the value of the total is greater than the sum of its parts.<sup>374</sup> Witness Kenworthy further details how a multi-technology VPP features value advantages in both degree and reliability compared to Consumers' existing programs.<sup>375</sup> These value added benefits are tangible: the Department of Energy has estimated that deploying between 80 GW and 160 GW of VPP capacity by 2030 would cover between 10% and 20% of peak load while reducing grid costs and supporting further load growth.<sup>376</sup> As Witness Kenworthy notes, "this is a significant, near-term, scalable resource if utilities enroll customer DERs."<sup>377</sup>

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<sup>370</sup> Cira-Reyes Direct Testimony at 3 TR 2341.

<sup>371</sup> *Id.* at 3 TR 2341–42.

<sup>372</sup> *Id.* at 3 TR 2341–46.

<sup>373</sup> Kenworthy Direct Testimony at 4 TR 3206–08.

<sup>374</sup> *Id.* at 4 TR 3206 (“A Virtual Power Plant . . . organizes customer flexibility into dispatchable capacity that reduces peaks, defers distribution infrastructure investment, and lowers system costs.”) *See also id.* at 4 TR 3208.

<sup>375</sup> *Id.* at 4 TR 3206.

<sup>376</sup> *Id.* at 4 TR 3209 (citing Ex. CEO-3, U.S. DEP’T OF ENERGY, PATHWAYS TO COMMERCIAL LIFTOFF: VIRTUAL POWER PLANTS 2025 UPDATE (2025) at [6]).

<sup>377</sup> *Id.*

Community solar is a type of distributed energy resource (DER) consisting of solar arrays that are sited within and typically owned by a local community.<sup>378</sup> Community solar improves affordability in EJ communities by reducing energy costs and expanding access to affordable clean energy. Community solar can lower upfront energy bills by as much as twenty-five percent, reducing energy burdens for vulnerable households.<sup>379</sup> Because community solar is collectively financed, it can deliver economic and social benefits, like wealth creation, energy autonomy and social connectivity, to individuals who otherwise would not be able to afford their own solar arrays.<sup>380</sup>

Community solar is particularly advantageous for residents of multi-family housing units, because they are often unable to install their own solar panels on a shared roof or a building they do not own.<sup>381</sup> In these instances, EJ communities, which often have significant amounts of multifamily housing, are particularly well-suited to benefit from community solar.<sup>382</sup>

Community solar can also improve energy reliability. In its Vulnerable Communities Resiliency Plan, the Company sets a goal of “ensuring that no EJ circuits experience worse than industry average reliability.”<sup>383</sup> Community solar is not susceptible to short-run supply shocks

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<sup>378</sup> Cira-Reyes Direct Testimony at 3 TR 2343–44 (citing Ex. UCC-58, *Solar Integration: Distributed Energy Resources and Microgrids*, U.S. DEP’T OF ENERGY (2025), at 2–3).

<sup>379</sup> Cira-Reyes Direct Testimony at 3 TR 2343–44 (citing Ex. UCC-59, *Sharing the Sun Market Report Details Expansive Growth, Recent Trends In Community Solar*, NAT’L RENEWABLE ENERGY LAB’Y (Oct. 19, 2021) at 2).

<sup>380</sup> Cira-Reyes Direct Testimony at 3 TR 2345.

<sup>381</sup> Ex. UCC-59, *Sharing the Sun Market Report Details Expansive Growth, Recent Trends In Community Solar*, NAT’L RENEWABLE ENERGY LAB’Y (Oct. 19, 2021), at 2).

<sup>382</sup> Consumers Energy also has a record of neglecting multi-family housing units in the adoption of another DER technology: electric vehicles that can give power back to the grid. Witness Jester points out that Consumers issued significantly fewer rebates for Vehicle-to-Grid EVs at multi-family housing units compared to single family home residential counterparts. *See* Jester Direct Testimony at 6 TR 4003. This record suggests that multi-family housing units, which make up a significant amount of housing in many EJ communities, miss out in large part on the economic benefits of Consumers’ DER programs. *See* Cira-Reyes Direct Testimony at 3 TR 2343–44.

<sup>383</sup> Myers Direct Testimony at 3 TR 1820.

during disasters and can reduce vulnerability to outages.<sup>384</sup> By increasing communities' energy reliability, community solar helps further the goals of the VCRP and provides EJ communities with opportunities to benefit from the clean energy transition.<sup>385</sup>

As described above, DERs, including but not limited to community solar, bring precisely the benefits that environmental justice communities need most: lower costs and improved reliability. UCC encourages the Commission to take advantage of this opportunity to endorse DERs and to scrutinize the Company's community solar efforts in other cases such as MPSC Case No. U-21972.

**b. The Company Should Upgrade the Grid to Facilitate DER Deployment in EJ Communities.**

The Company should upgrade the grid in EJ communities to facilitate the deployment of DERs there. UCC has three concerns with how the Company assesses the grid's ability to handle DER deployment in EJ communities: (1) averages can cloak problems at individual locations;<sup>386</sup> (2) the Company did not provide Phase II of its Hosting Capacity Analysis, required by the settlement in Case No. U-21224,<sup>387</sup> until after the deadline for submission of testimony in this case, making it impossible for intervenors to comprehensively comment on the analysis in this case, and (3) the Company appears to place the burden on EJ communities to identify and demonstrate insufficient capacity before the Company will act.

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<sup>384</sup> Cira-Reyes Direct Testimony at 3 TR 2344 (citing Ex. UCC-61, KATY WAECHTER ET AL., NAT'L RENEWABLE ENERGY LAB'Y, TECHNICAL POTENTIAL AND MEANINGFUL BENEFITS OF COMMUNITY SOLAR IN THE UNITED STATES (2024), at 41).

<sup>385</sup> Cira-Reyes Direct Testimony at 3 TR 2345.

<sup>386</sup> See Kelly Rebuttal Testimony at 3 TR 1622 (pointing to average circuit-level data that allegedly shows higher hosting capacity in EJ areas but notes how systemic averages can mask local peculiarities).

<sup>387</sup> *Id.* at 3 TR 1621.

First, Witness Kelly acknowledges that averages can mask “local peculiarities”<sup>388</sup> with regard to reliability. While the Company’s analysis shows that “the average circuit-level hosting capacity on an EJ circuit is 8.9 MW, compared to the Company’s systemwide average of 6.4 MW,”<sup>389</sup> averages are meaningless when evaluating whether specific communities can actually connect DERs. A circuit with 8.9 MW of average hosting capacity could have zero capacity at the specific locations where EJ residents want to install solar panels or batteries. What matters is not the average capacity across an entire circuit, but whether specific EJ communities can interconnect DERs at their homes and businesses.

Second, the Company published its Phase II Hosting Capacity Analysis on September 30, 2025—too late for intervenors to conduct meaningful analysis for the purposes of this rate case.<sup>390</sup> UCC and other intervenors should have had the opportunity to review and testify on the adequacy of the Phase II analysis, and UCC reserves its rights to comment on this analysis in future cases.

Finally, Witness Kelly offers only a conditional commitment that the Company “would consider making capacity investments” *only* after “individual EJ circuits are found to be constrained.”<sup>391</sup> This reactive approach effectively offloads the burden of identifying and proving hosting capacity constraints on EJ communities before the Company will “consider” investing in them. The Company should identify constraints such as “local peculiarities” *before* they become barriers to DER implementation and make investments accordingly. Witness McPhail’s testimony neither indicates an explicit attention to EJ communities’ heightened need for DERs, nor articulates a goal of prioritizing DER integration into communities that would benefit from DERs most.<sup>392</sup>

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<sup>388</sup> *Id.* at 3 TR 1622.

<sup>389</sup> *Id.* at 3 TR 1621–22.

<sup>390</sup> *Id.* at 3 TR 1621.

<sup>391</sup> *Id.* at 3 TR 1622.

<sup>392</sup> Cira-Reyes Direct Testimony at 3 TR 2343.

The Company's strategic DER planning thus fails to recognize the need and opportunity for investment in EJ communities.

Ultimately, what is needed is further investment by Consumers to address shortfalls in the grid that make it difficult or impossible for the deployment of DER in EJ communities. DERs address many of the needs of EJ communities, including for affordability, reliability, and ownership. But gaps in the grid can impede EJ communities' access to these resources. Thus the Company should invest to address the shortfalls identified by Phase II of the Hosting Capacity Analysis.

**c. Community Solar is an Important DER for EJ Communities that Improves Energy Affordability and Reliability.**

Despite the benefits of community solar described above, Consumers' existing Solar Gardens program is not a true community solar program, and the Company has not implemented any other true community solar programs in EJ communities, thereby precluding EJ communities in Consumers' territory from receiving the benefits of community solar. The Solar Gardens program enables ratepayers to subscribe to "Solar Blocks," or the Company producing solar energy at solar power plants.<sup>393</sup> Solar Gardens provides power to communities with access to clean solar energy; however, because the Company's solar power plants are not located in the communities where participants live, participants do not themselves benefit from the reliability provided by nearby renewable energy sources. Moreover, they do not own the renewable energy generation sources, which means that they are not reaping the financial benefits that accrue through equity or equity-like investments.

In addition, and as described above, gaps in Consumers' current DER programs and grid investments suggest many EJ communities may have less meaningful access to the economic

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<sup>393</sup> Cira-Reyes Direct Testimony at 3 TR 2344.

benefits of DERs, including community solar, compared to their non-EJ counterparts due to grid shortfalls. The Company’s DER Optimization Initiative and Vulnerable Communities Resiliency Plan, two programs supporting DER implementation, do not include explicit commitments to improve hosting capacity in EJ communities prior to the construction of DERs in general.<sup>394</sup> Witness Cira-Reyes reports a concern that EJ communities with low hosting capacity “may be left behind in initial rounds of DER investment,” a problem that can only be solved by Consumers upgrading the grid.<sup>395</sup> Witness Kelly states that “the Company would consider making capacity investments” in individual EJ circuits where hosting capacity is found to be limited.<sup>396</sup> Without unambiguous commitments to take practical steps (i.e., improve hosting capacity) to prepare EJ communities for DERs, DER adoption, including but not limited to community solar, could bypass EJ communities. The Commission should order Consumers to follow through on this consideration.

In last year’s Consumers rate case, the Commission expressed that it was “supportive of community solar proposals from the company that include opportunities for interested persons to have input into program design and help shape the deployment of cost-effective community solar, consistent with Michigan law.”<sup>397</sup> While the Commission may assess the details of specific community solar proposals in VGP cases,<sup>398</sup> issues of affordability and reliability—which are central to rate increases being just and reasonable—are germane in this proceeding because they depend on investment in DERs, including community solar, and in the grid capacity to support DERs.

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<sup>394</sup> *Id.* at 3 TR 2343.

<sup>395</sup> *Id.* at 3 TR 2342.

<sup>396</sup> *Id.* at 3 TR 1622.

<sup>397</sup> *In re Consumers Energy Co.*, MPSC Case No. U-21585, Order (March 21, 2025), at 401.

<sup>398</sup> *See generally In the matter of the application of Consumers Energy Company for approval of Voluntary Green Pricing programs*, MPSC Case No. U-21972.

**4. Consumers Must Better Address Some of the Challenges that Extreme Weather Events Pose to Its Customers, Particularly to LMI Households.** (*Issue VIII. Other Issues*)

Extreme weather stresses customers' health and finances and strains the electric grid. As the instances of extreme weather increase, the Company has recognized the impacts of extreme weather events on the reliability of grid infrastructure.<sup>399</sup> Additionally, more frequent and intense extreme weather events, without adequate protection for customers, increase individuals' exposure to temperatures that endanger health and are especially burdensome for LMI customers.

One way to address some of these challenges is by further investment in the grid and alternative sources of reliable energy, such as DERs and community solar. The Company has outlined its plans to consider extreme weather events in its Reliability Roadmap, which is a "continuation and ... expansion of the Company's long-term distribution strategy."<sup>400</sup> It is important that the Commission requires the Company to consider EJ communities in these discussions.

A second critical way to address some of these challenges, discussed in greater detail below, is by reducing or eliminating shutoffs that occur during extreme weather events and during specific months when such harsh conditions are more likely to arise. Statewide, from 2010 to 2024, Michigan residents experienced approximately 870,000 disconnections between May and October.<sup>401</sup> A recent study shows that Michigan ranks fourth amongst all states for disconnection rates, particularly in June.<sup>402</sup> Many disconnections for nonpayment occur during some cold-

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<sup>399</sup> Kelly Direct Testimony at 3 TR 1391.

<sup>400</sup> Kelly Direct Testimony at 3 TR 1381.

<sup>401</sup> Cira-Reyes Direct Testimony at 3 TR 2303 (citing Ex. UCC-30, Image taken from: Sanya Carley & David Konisky, *Utility Connections Dashboard*, ENERGY JUST. LAB (2023), <https://utilitydisconnections.org/dashboard/index.html> (screenshot captured Sep. 22, 2025)).

<sup>402</sup> Cira-Reyes Direct Testimony at 3 TR 2303 (citing Ex. UCC-31, SELAH G. BELL ET AL., CTR. FOR BIOLOGICAL DIVERSITY, POWERLESS IN THE U.S. (2023)).

weather months, too. For example, in December 2024, Consumers disconnected 5,599 residential electric customers for non-payment, representing a more than 15% increase compared to December 2023.<sup>403</sup> If the Commission approves a rate increase in this case, it will be harder for some customers to pay their already unaffordable bills, putting them at greater risk of being disconnected from power during periods of extreme heat or cold. Because the Commission is directed under Michigan Administrative Rule 460.101(2) to ensure that utility service “promote[s] safe and adequate service to the public and provide[s] standard for uniform and reasonable practices . . . by utilities,”<sup>404</sup> the Commission can and should take action in this case to protect customers from a lack of power during these periods by pausing disconnections and requiring reasonable reconnections.

**a. Consumers Energy Must Invest Appropriately in Its Grid to Address Extreme Weather Events.**

Extreme heat threatens Consumers’ cables, transformers, and other grid components, stressing an already underperforming distribution system. The Company’s modeling projects an increase of between 10% and 25% in severe weather-related outages by the early 2030s, compared to 2020 levels.<sup>405</sup> This additional strain on the system is particularly concerning because an external audit conducted by Liberty Consulting Group assessed the Company’s historical System

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<sup>403</sup> Cira Reyes Direct Testimony at 3 TR 2305–06 (citing *In re Response to COVID-19 Pandemic*, MPSC Case No. U-20757, Consumers Energy Company’s December 2024 Report on Disconnected Service to Occupied and Unoccupied Residences (Jan. 13, 2025), at 2; *In re Response to COVID-19 Pandemic*, MPSC Case No. U-20757, Consumer’s Energy Company December 2023 Report on Disconnected Service to Occupied and Unoccupied Residences (Jan. 10, 2024), at 2.

<sup>404</sup> MICH. ADMIN. CODE r. 460.101(2) (2017).

<sup>405</sup> Kelly Direct Testimony at 3 TR 1391.

Average Interruption Duration Index (“SAIDI”) and found that the Company has not improved its reliability over the past decade, in fact noting that reliability in 2022 was worse than in 2014.<sup>406</sup>

The Company plans to improve its reliability through a multi-year investment plan established in the Reliability Roadmap.<sup>407</sup> In developing the Reliability Roadmap, the Company identified increasingly severe weather as a major factor that would most likely pose a future risk to the distribution system.<sup>408</sup> The Company projects that the Reliability Roadmap will yield up to \$6.1 billion worth of benefits in avoided outage costs.<sup>409</sup> In total, the Company is directing \$697,127,000 of test year capital towards the Reliability Program.<sup>410</sup>

While increasing extreme weather conditions provide another important reason for the company to upgrade its grid, and while it is laudable that the Company is now considering the effects of extreme weather in its grid upgrades, it is important that Consumers ensures increased reliability for vulnerable customers in its service territory. While the Company describes the Reliability Roadmap as a “continuation and ... expansion of the Company’s long-term distribution strategy,”<sup>411</sup> what is also needed is a more comprehensive and transformative approach to addressing reliability, including furthering the adoption of DERs and community solar as described above.

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<sup>406</sup> Kelly Direct Testimony at 3 TR 1396–97; *but see id.* at 3 TR 1397 (“The Company submits that five-year rolling averages should be used for such comparisons, to limit annual variability and to reduce the arbitrariness of which cut-off dates to use.”).

<sup>407</sup> *Id.* at 3 TR 1380–81.

<sup>408</sup> *Id.* at 3 TR 1390.

<sup>409</sup> *Id.* at 3 TR 1417.

<sup>410</sup> *Id.* at 3 TR 1430.

<sup>411</sup> *Id.* at 3 TR 1381.

**b. Extreme Temperature Periods, and Disconnections and Shutoffs During These Periods, Pose Increased Challenges to LMI Households.**

Extreme weather can be challenging for all customers, but it is especially burdensome for LMI and some BIPOC households. First, energy-insecure households are often less energy efficient.<sup>412</sup> Consequently, and in general, an LMI household may require more heat in the winter and more cooling in the summer than a comparable non-LMI home, thus facing higher energy bills per square foot.<sup>413</sup> BIPOC households, which tend to comprise a higher percentage of LMI communities<sup>414</sup> and tend to have less energy-efficient housing, are also at particular risk.<sup>415</sup> Extreme weather exacerbates the need for additional heat during extreme cold events and additional cooling during extremely hot periods, resulting in increased costs and financial burdens on LMI and some BIPOC households.

These burdens prompt many members of these communities to resort to dangerous coping mechanisms to prevent shutoffs by the Company that can put their health and safety at risk. For example, many members of LMI communities forgo the use of air conditioning during extreme heat events and the use of heat during extreme cold, with the inevitable result of exposing their households to unsafe temperatures for prolonged periods.<sup>416</sup> Witness Williams further identifies

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<sup>412</sup> Cira-Reyes Direct Testimony at 3 TR 2296.

<sup>413</sup> *Id.* at 3 TR 2296 (citing Ex. UCC-12, Ross Beall & Carolyn Hronis, *U.S. Energy Insecure Households Were Billed More for Energy than Other Households*, U.S. ENERGY INFO. ADMIN. (May 30, 2023), at 2). *See also* Williams Direct at 3 TR 2382 (explaining that window units are less expensive to install compared to central AC, but also less efficient, leading to higher energy bills).

<sup>414</sup> Cira-Reyes Direct Testimony at 3 TR 2297 (citing Ex. UCC-13, Kyle Ross & Justin Dorazio, *The Latest Poverty, Income, and Food Insecurity Data Reveal Continuing Racial Disparities*, CTR. FOR AM. PROGRESS (Dec. 21, 2022)).

<sup>415</sup> *Id.* at 3 TR 2297 (citing Ex. UCC-6, AMERICAN COUNCIL FOR AN ENERGY-EFFICIENT ECONOMY (ACEEE), DATA UPDATE: CITY ENERGY BURDENS (2024) at 2).

<sup>416</sup> Cira-Reyes Direct at 3 TR 2301–02 (citing Ex. UCC-24, Jaqueline M. Doremus et al., *Sweating the Energy Bill: Extreme Weather, Poor Households, and the Energy Spending Gap*, 112 J. OF ENV'T ECON. AND MGMT. Art. 102609 (2022), at 12); Ex. UCC-25, CTR. FOR ENERGY POVERTY AND CLIMATE AND NAT'L ENERGY ASSISTANCE DIRS.' ASS'N, *CRISIS IN ENERGY AFFORDABILITY: SUMMER SHUTOFF PROTECTIONS AND BILL SUPPORT FAIL TO ADAPT TO A WARMING WORLD* (2024) at 3).

using ovens for heat during cold months as a potential coping mechanism.<sup>417</sup> These mechanisms have been proven to pose severe health and safety risks, and these risks are only amplified with the increase in extreme temperatures caused by climate change.<sup>418</sup> For example, a metro Detroit study demonstrates that by compromising the body’s ability to regulate its internal temperature, extreme heat can result in adverse health effects, including cramps, heat exhaustion, heatstroke, hyperthermia, respiratory problems, and even death.<sup>419</sup>

The challenges that extreme weather and temperatures pose to LMI and many BIPOC communities take place against a backdrop in which these households face greater energy burdens compared to higher-income households,<sup>420</sup> and are thus disproportionately affected by higher rates of disconnections for non-payment. As described in detail above, Consumers Energy has identified 11% of its customers as being “in crisis and unable to pay their energy bill” and another 26% of its customers as “being one crisis away from being able to pay their energy bill.”<sup>421</sup> Extreme weather further strains these customers.

Existing assistance programs provide insufficient support to address these challenges. For example, the Company’s Winter Protection program helps to prevent shutoffs during the cold months, and the Company states that it automatically enrolls customers receiving the ‘Home

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<sup>417</sup> Williams Direct Testimony at 3 TR 2381.

<sup>418</sup> Cira-Reyes Direct at 3 TR 2301–02; Ex. UCC-26, Jacqueline E. Cardoza et al., *Heat-Related Illness Is Associated with Lack of Air Conditioning and Pre-existing Health Problems in Detroit, Michigan, USA: A Community-Based Participatory Co-Analysis of Survey Data*, INT’L J. OF ENV’T RSCH. & PUB. HEALTH (Aug. 7, 2020), at 1, 8).

<sup>419</sup> Cira-Reyes Direct Testimony at 3 TR 2302 (citing Ex. UCC-26, Jacqueline E. Cardoza et al., *Heat-Related Illness Is Associated with Lack of Air Conditioning and Pre-existing Health Problems in Detroit, Michigan, USA: A Community-Based Participatory Co-Analysis of Survey Data*, INT’L J. OF ENV’T RSCH. & PUB. HEALTH (Aug. 7, 2020) at 1, 8).

<sup>420</sup> Cira-Reyes Direct Testimony at 3 TR 2295 (citing Ex. UCC-7, *Study: One in Four Low-Income Households Spend Over 15% of Income on Energy Bills*, AM. COUNCIL FOR AN ENERGY-EFFICIENT ECON. (Sep. 11, 2024), at 2); *see also* Cira-Reyes Direct Testimony at 2298 (citing Ex. UCC–6 at 2) (noting that BIPOC households on average have higher energy burdens than the national average). *See also supra* Part III.A.1 (describing the current affordability crisis).

<sup>421</sup> Byrom Direct Testimony at 3 TR 967.28–29. *See also supra* Part III.A.1.

Heating Credit’ into this program.<sup>422</sup> However, other eligible customers are not automatically enrolled and often do not know the program exists.<sup>423</sup> According to Witness Williams, this protection applies from November 1<sup>st</sup> to March 31<sup>st</sup> for customers who meet specific requirements, such as “being over 65” or receiving “certain government benefits (e.g., Medicaid or food assistance programs).”<sup>424</sup> Witness Williams found it problematic that she had to apply for this protection, and that through her community work, she has found that many families don’t know this protection even exists.<sup>425</sup> Even when customers are aware of the protection, Witness Williams states that, “[t]he current system requires families to navigate bureaucracy and delays critical protections when they are most vulnerable.”<sup>426</sup> The Company should make it easier for customers to enroll in the Winter Protection Program. Notably, at the same time, a similar protection program also does not exist for the warmer months, which is increasingly important as extreme heat events become more common.<sup>427</sup>

When utilities shut off customers during extreme weather events, they leave customers in situations that are perilous to their health. During periods of extreme heat, a lack of air conditioning has been found to lead to a variety of health problems, including cramps, heat exhaustion, heatstroke, hyperthermia, respiratory problems, and even death.<sup>428</sup> Since energy-insecure households are often less energy efficient, LMI households experience longer exposure times to

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<sup>422</sup> Byrom Rebuttal Testimony at 3 TR 967.70–71.

<sup>423</sup> Williams Direct Testimony at 3 TR 2395.

<sup>424</sup> *Id.* at 3 TR 2394–95.

<sup>425</sup> *Id.* at 3 TR 2395.

<sup>426</sup> *Id.*

<sup>427</sup> *See generally* Cira-Reyes Direct Testimony at 3 TR 2301–05.

<sup>428</sup> Cira-Reyes Direct Testimony at 3 TR 2302 (citing Ex. UCC-24, Jaqueline M. Doremus et al., *Sweating the Energy Bill: Extreme Weather, Poor Households, and the Energy Spending Gap*, 112 J. OF ENV’T ECON. AND MGMT. Art. 102609 (2022), at 12).

indoor extreme heat and the highest relative costs of AC operation.<sup>429</sup> These effects are only exacerbated when customers' electricity has been disconnected due to non-payment during periods of extreme heat. According to the U.S. Department of Health and Human Services, heat-related deaths in the U.S. have increased from approximately 1,602 in 2021 to 2,302 in 2023.<sup>430</sup> As summers continue to get hotter,<sup>431</sup> if customers are unable to ensure their homes are kept at reasonable temperatures, they will be more likely to be in unhealthy situations that may even lead to their death.

**c. The Commission Should Order Consumers to Put in Place Protections for Customers During Extreme Heat Events, Even as It Considers Longer-Term Policies in Case No. U-20140.**

While the Company recognizes that “climate change will result in more severe weather and extreme heat, in turn creating increasing reliability and resiliency challenges for the distribution system”<sup>432</sup> and “projects an increase of 10-15% in severe weather-related outages by the early 2030s,”<sup>433</sup> its policies remain insufficient to protect the customers who face grave heat-related health risks. In August 15, 2018, in Case No. U-20140, Consumers filed and received approval for its current Extreme Weather policy.<sup>434</sup> The Company's current policy mandates same-day

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<sup>429</sup> *Id.* at 3 TR 2303 (citing Ex. UCC-28, ARIEL DREHOBL ET. AL, AM. COUNCIL FOR AN ENERGY-EFFICIENT ECON., HOW HIGH ARE HOUSEHOLD ENERGY BURDENS? (2020), at 13; Ex. UCC-29, Luis Ortiz et al., *Energy Burden and Air Conditioning Adoption in New York City Under a Warming Climate*, 76 SUSTAINABLE CITIES AND SOC'Y Art. 103465 (2022), at 33).

<sup>430</sup> *Id.* at 3 TR 2302 (citing Ex. UCC-27, Assistant Secretary for Health, *Extreme Heat*, U.S. DEP'T OF HEALTH AND HUM. SERVS. (July 2, 2024), at 3.

<sup>431</sup> *Id.* (citing Ex. UCC-8, MARK WOLFE ET AL., CTR. FOR ENERGY POVERTY AND CLIMATE (CEPC), AMERICA NEEDS A PARADIGM SHIFT IN HOW THE NATION RESPONDS TO EXTREME HEAT (2024) at 3).

<sup>432</sup> Kelly Direct Testimony at 3 TR 1391.

<sup>433</sup> *Id.*

<sup>434</sup> *In re MPSC Regarding Extreme Weather Condition Policies Filed in Compliance with Michigan Administrative Code R 460.134*, MPSC Case No. U-20140, Order (Aug. 28, 2018) [hereinafter U-20140 August 2018 Order], Ex. A at 1.

suspension of service disconnections when temperatures exceed 90°F, fall below 15°F, or when wind chills drop below 0°F.<sup>435</sup>

The Company's current extreme heat policy is insufficient, and can result in harm to energy-insecure households that are often less energy efficient, exposing them to extreme indoor heat while incurring high energy burdens from air conditioning use.<sup>436</sup> Since studies have found that extreme or prolonged heat exposure over the course of days or weeks can be particularly dangerous for community health, it is vital that Michigan utility regulations consider both the long- and short-term implications of shutoffs during periods of extreme heat.<sup>437</sup> As written, the Company's current policies, at a baseline, do not provide for protections that extend past the day an extreme heat event is forecasted, potentially leaving customers without electricity during holidays or weekends when extreme heat events may occur, but reconnection may not be possible.<sup>438</sup> The Company's current temperature threshold of 90°F based on weather.com data considers only the forecasted or actual temperatures,<sup>439</sup> which is not as holistic as measures like

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<sup>435</sup> U-20140 August 2018 Order, Ex. A at 1; *see also In re MPSC Regarding Extreme Weather Condition Policies Filed in Compliance with Michigan Administrative Code R 460.134*, MPSC Case No. U-20140, Consumers Energy Company's Response to the Commission's Questions on Extreme Weather Condition Policies (Sep. 18, 2025) [hereinafter U-20140 Consumers Response to the Commission's Question]; *In re MPSC Regarding Extreme Weather Condition Policies Filed in Compliance with Michigan Administrative Code R 460.134*, MPSC Case No. U-20140, Consumer Energy Company's Reply Comments on Extreme Weather Condition Policies (Oct. 16, 2025).

<sup>436</sup> Cira-Reyes Direct Testimony at 3 TR 2303 (citing Ex. UCC-29, Luis Ortiz et al., *Energy Burden and Air Conditioning Adoption in New York City Under a Warming Climate*, 76 SUSTAINABLE CITIES AND SOC'Y Art. 103465 (2022), at 33).

<sup>437</sup> *In re MPSC Regarding Extreme Weather Condition Policies Filed in Compliance with Michigan Administrative Code R 460.134*, MPSC Case No. U-20140, Comments of Soulardarity, Urban Core Collective, and We Want Green, Too (Sep. 18, 2025) [hereinafter U-20140 Comments of Soulardarity, Urban Core Collective, and We Want Green, Too] (referenced in Cira-Reyes Direct Testimony at 3 TR 2304) at 11–12.

<sup>438</sup> *Id.* at 13.

<sup>439</sup> U-20140 August 2018 Order, Exhibit A at 1.

National Weather Service (NWS) advisories that other states use.<sup>440</sup> The Company’s current extreme heat policies can be improved in the short and long term to minimize severe health risks to vulnerable communities.

UCC appreciates that the Commission reopened the discussion of extreme weather disconnection policies in Case No. U-20140,<sup>441</sup> but the pressing nature of extreme heat as a health and safety concern requires the Commission to order protective and comprehensive measures in the current case. While the Company claims that its Extreme Weather policy is “adequate in protecting customers during severe conditions ... [and that] [b]enchmarking against other utility providers indicates that these thresholds align with industry standards and best practices,”<sup>442</sup> as outlined in a Comment submitted by UCC, Soulardarity, and We Want Green, Too in Case No. U-20140, Consumers’ protections are not as comprehensive as the state-required minimums in other states.<sup>443</sup> Instead of the fixed temperature from weather.com on which Consumers relies, many states consider National Weather Service (NWS) advisories, which consider the potential for a heat index value to meet or exceed a certain temperature based on the state’s geographic location within the next twelve to forty-eight hours and can account for multi-day heat waves, allowing for a more comprehensive approach that considers multi-day heat waves, the impact on residents based on their geographic location, and how the temperature actually feels to the human body.<sup>444</sup> Additionally, several jurisdictions extend protections beyond the duration of qualifying weather

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<sup>440</sup> U-20140 Comments of Soulardarity, Urban Core Collective, and We Want Green, Too (referenced in Cira-Reyes Direct Testimony at 3 TR 2304) at 6, 12 (finding that nine out of the seventeen states surveyed rely on NWS advisories, warnings, and watches).

<sup>441</sup> *In re MPSC Regarding Extreme Weather Condition Policies Filed in Compliance with Michigan Administrative Code R 460.134*, MPSC Case No. U-20140, Order (Aug. 7, 2025).

<sup>442</sup> U-20140 Consumers Response to the Commission’s Question at 2.

<sup>443</sup> Cira-Reyes Testimony at 3 TR 2304–05 (U-20140 Comments of Soulardarity, Urban Core Collective, and We Want Green, Too).

<sup>444</sup> U-20140 Comments of Soulardarity, Urban Core Collective, and We Want Green, Too (referenced in Cira-Reyes Direct Testimony at 3 TR 2304) at 5-6.

events to include weekends or holidays, or to an additional forty-eight hours, ensuring that their citizens are protected when temperatures may continue to be elevated or when they may not have access to reconnection on weekends or holidays.<sup>445</sup> These state policies provide longer-term and more comprehensive protections to individuals impacted by extreme heat as compared to Consumers’ policy.<sup>446</sup> In addition, Oregon and Washington State, for example, provide robust reconnection programs, requiring utilities to make “best efforts” or “reasonable attempts” to reconnect service on days for which there is an extreme heat event to customers who have been disconnected for lack of payment<sup>447</sup> which ensures that individuals will be protected during extreme heat events despite being disconnected prior.

Because Consumers’ inadequate current protections do not sufficiently protect customers from extreme heat, the Commission must require the Company to pause disconnections—and reasonably reconnect disconnected customers—during a broader period of time<sup>448</sup> and for a broader range of heat conditions.<sup>449</sup> As described above, exposure to extreme heat poses severe

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<sup>445</sup> U-20140 Comments of Soulardarity, Urban Core Collective, and We Want Green, Too (referenced in Cira-Reyes Direct Testimony at 3 TR 2304) at 5.

<sup>446</sup> In addition to ensuring that individuals are protected from shutoffs during periods of extreme heat, it is important that the Company considers the longer-term impacts of extreme weather on its grid and is required to demonstrate how any updates they adopt meaningfully increase reliability, as explained *supra* at Part III.D.4.

<sup>447</sup> U-20140 Comments of Soulardarity, Urban Core Collective, and We Want Green, Too (referenced in Cira-Reyes Direct Testimony at 3 TR 2304) at 10.

<sup>448</sup> The pause could be for more time around an extreme weather event or for the entirety of the summer months of June, July, and August. But see *In re MPSC Regarding Extreme Weather Condition Policies Filed in Compliance with Michigan Administrative Code R 460.134*, MPSC Case No. U-20140, Consumer Energy Company’s Reply Comments on Extreme Weather Condition Policies (Oct. 16, 2025) at 2-3 (“Consumers Energy does not support protections based on historical temperatures or calendar months, since these factors do not guarantee future temperatures will exceed the temperature threshold that would merit suspending disconnections. [E]xtending the disconnection moratorium for a pre-determined amount of time would create situations when disconnections are suspended despite cooler temperatures.”).

<sup>449</sup> See *In re MPSC Regarding Extreme Weather Condition Policies Filed in Compliance with Michigan Administrative Code R 460.134*, MPSC Case No. U-20140, Consumer Energy Company’s Reply Comments on Extreme Weather Condition Policies (Oct. 16, 2025) at 4 (“While the Company

health and safety risks, which will only be amplified by the increase in extreme weather events due to climate change. To protect Michigan residents adequately, Consumers should better account for multi-day heatwaves and incorporate a broader definition of the kinds of heat events that trigger protections. Not only should the Company not disconnect customers during these times, it should also reasonably reconnect disconnected customers so that they have adequate cooling during these stressing times.<sup>450</sup> Even if the Commission does not order the Company to take such an approach in this case, the Commission could strongly suggest that the Company act or that the Company incorporate these considerations when it develops new policies as a result of the Case No. U-20140 docket.

In sum, and concretely, UCC requests that:

- (1) The Commission requires Consumers to (a) promote better the Winter Protection Plan to all customers who meet eligibility criteria, and (b) make it easier for customers to enroll in the plan.
- (2) The Commission orders Consumers to adopt the following minimum extreme heat policies:<sup>451</sup>
  - a. Consumers should be prohibited from disconnecting residential service when either: (1) the forecasted temperature will reach 90°F or above in the service area,

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currently uses a blend of other weather-related websites to determine the temperature forecast, it is open to using NWS data.”).

<sup>450</sup> See *In re MPSC Regarding Extreme Weather Condition Policies Filed in Compliance with Michigan Administrative Code R 460.134*, MPSC Case No. U-20140, Consumer Energy Company’s Reply Comments on Extreme Weather Condition Policies (Oct. 16, 2025) at 5 (noting that Consumers does not reconnect disconnected customers—“[w]hen temperatures are expected to exceed 90°F for two or more consecutive days, Consumers Energy contacts all customers who have been disconnected in the last 30 days that have yet to reconnect their service, advising of the conditions and providing referral resources for reconnection.”).

<sup>451</sup> See *Cira-Reyes Testimony* at 3 TR 2304 (citing U-20140 Comments of Soulardarity, Urban Core Collective, and We Want Green, Too at 12–13).

or (2) the NWS issues a heat advisory, excessive heat watch, or excessive heat warning for the service area, which considers a variety of factors, including an elevated heat index and local preparedness.<sup>452</sup>

- b. Second, disconnections should be, at a minimum, restricted at least 24 hours before and after extreme heat events, and these restrictions should be extended to weekends and holidays. The Commission should also consider policies which (1) address affordability issues simultaneously, such as providing customers the option to be on a payment plan that limits energy burdens to six percent or less, and (2) require utilities to make reasonable efforts to reconnect individuals who have been disconnected for nonpayment.<sup>453</sup>
  - c. Third, disconnections during the summer months of June, July, August, and September should be disallowed.<sup>454</sup>
- (3) Should the Commission choose to wait until further action is taken in Case No. U-20140, the Commission should order an interim moratorium on disconnections during the hot summer months of June, July, August, and September.<sup>455</sup>

**5. Consumers Has Not Complied with the Commission Order to Make GIS Reliability Data Publicly Accessible.** (*Issue VIII.B. Distribution System Planning and Analysis*)

Consumers Energy has not yet complied with its directive in the prior rate cases to make Geographic Information System (“GIS”) reliability data publicly accessible. Although the Company has developed a public GIS map, the map’s design prevents intervenors and members

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<sup>452</sup> See Cira-Reyes Direct Testimony at 3 TR 2304.

<sup>453</sup> U-20140 Comments of Soulardarity, Urban Core Collective, and We Want Green, Too (referenced in Cira-Reyes Direct Testimony at 3 TR 2304) at 13 (discussing policies like those in Oregon and Washington State which provide enhanced protections).

<sup>454</sup> See Cira-Reyes Direct Testimony at 3 TR 2304.

<sup>455</sup> See *id.*

of the public from meaningfully understanding or analyzing the data.<sup>456</sup> The Company’s current implementation therefore fails to achieve the purpose of the Commission’s order, and further modifications are necessary for full compliance with the order.

Meaningful access to GIS data is a key aspect of both evaluating whether Consumers’ reliability investments are equitably distributed across its service territory and providing transparency to customers. Without the ability to identify EJ circuits, compare reliability performance, or interpret data categories, intervenors and the public cannot assess or verify the Company’s reliability investments in EJ communities.<sup>457</sup> Ensuring that GIS data is intelligible and usable is therefore necessary to enable independent review and promote transparency in the Company’s equity and reliability performance.

In Case No. U-21389, the Commission agreed with Staff that Consumers should develop, with Staff’s input, “a clear and repeatable process that allows interested parties to request, safely obtain, and use GIS data.”<sup>458</sup> The Commission emphasized the value of this data “for communities and analyzing the company’s plans for the future.”<sup>459</sup>

In Case No. U-21585, the Administrative Law Judge (ALJ) found that while Consumers had compared EJ and non-EJ circuits, it “has not provided a process for interested parties to obtain GIS data.”<sup>460</sup> The ALJ accepted the Company’s assertion that it was working in good faith toward compliance. The Commission “adopt[ed] the findings and recommendations of the ALJ.”<sup>461</sup>

In this case, the Company claims compliance with the previous orders, but ultimately falls short. Company Witness Michael Kelly testifies that the Company has developed interactive GIS

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<sup>456</sup> *Id.* at 3 TR 2340.

<sup>457</sup> *Id.* at 3 TR 2339–40.

<sup>458</sup> *In re Consumers Energy Co.*, MPSC Case No. U-21389 Order at 286.

<sup>459</sup> *Id.*

<sup>460</sup> *In re Consumers Energy Co.*, MPSC Case No. U-21585, Order at 371.

<sup>461</sup> *Id.* at 375.

maps available on its public website showing EJ circuits overlaid with EJ census tracts, along with SAIDI and SAIFI metrics by circuit.<sup>462</sup> The Company also created an online form through which users may access GIS data.<sup>463</sup> Company witness Kelly testifies that the map was developed based on Staff feedback, stating that Company representatives met with Staff multiple times.<sup>464</sup>

However, despite these efforts, the resulting GIS map and data form fall short—in multiple ways. The map’s current design does not fulfill the purpose of allowing the public to understand the company’s reliability data.<sup>465</sup> As Witness Cira-Reyes testifies, the map is not user-friendly and therefore does not serve the purpose of allowing any intervenor or member of the public to understand the Company’s reliability data.<sup>466</sup> When visiting the map, it is difficult to identify which circuits serve EJ communities; reliability data is not clearly displayed or explained; users cannot perform side-by-side comparisons between different circuits; and there is no sufficient key clarifying acronyms or metrics.<sup>467</sup> Because these design flaws prevent users from understanding or verifying the Company’s reliability performance, the current GIS map does not constitute functional public access. Providing an online platform without enabling comprehension of the underlying data frustrates the Commission’s intent and undermines transparency in assessing Consumers’ investments in EJ communities.

Company Witness Kelly is incorrect in his rebuttal testimony when he argues that requiring the map to be easily used by any member of the general public creates a broad and vague target condition.<sup>468</sup> On the contrary, the Commission’s directive rightfully affords the Company

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<sup>462</sup> Kelly Direct Testimony at 3 TR 1451.

<sup>463</sup> *Id.*

<sup>464</sup> Kelly Rebuttal Testimony at 3 TR 1621.

<sup>465</sup> Cira-Reyes Direct Testimony at 3 TR 2340.

<sup>466</sup> *Id.*

<sup>467</sup> *Id.*

<sup>468</sup> Kelly Rebuttal Testimony at 3 TR 1621.

discretion in determining how to make GIS data publicly accessible. That flexibility is a benefit, not a burden. The flexibility provides a means of ensuring that accessibility continues to improve through collaboration with stakeholders, intervenors, and Staff. By treating that expectation as impermissibly vague, the Company inappropriately attempts to sidestep the Commission's order and accountability for the shortcomings of its current mapping tool.

Moreover, consultation with Staff neither resolves the core accessibility issues identified by Witness Cira-Reyes, nor does it bring the Company into compliance with the Commission's directive. Staff's involvement does not diminish the Company's independent obligation to ensure that the resulting platform can be readily navigated and understood by intervenors and the public. A public-facing tool that remains difficult to interpret cannot possibly satisfy the Commission's directive, regardless of prior consultation with Staff. This need for accessible and functional GIS data is reinforced by the Company's own characterization of the map as a "public-facing tool" and its acknowledgement that it "can certainly look for ways to make continuous improvements" to that tool.<sup>469</sup>

Accordingly, the Commission should direct Consumers to revise its GIS data map to meet the standard required by the Commission's Order in Case No. U-21389.<sup>470</sup> To bring the Company into compliance, the Commission should require that Consumers: (1) include a clear key explaining all acronyms and data categories; (2) add intuitive and navigable map controls; and (3) implement functionality that allows side-by-side comparison of reliability performance across circuits. These necessary improvements would impose minimal burden on the Company while transforming the GIS map into a meaningful public access tool, ensuring compliance with the

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<sup>469</sup> *Id.*

<sup>470</sup> *In re Consumers Energy Co.*, MPSC Case No. U-21389, Order at 286.

Commission's Order in Case No. U-21389 and advancing transparency in the Company's reliability data.

[The next section starts at the top of the next page]

**E. The Commission Should Ensure Accountability and Transparency for the Company’s Current Investment Recovery Mechanism (IRM) and for any IRM Extension.** (*Issue VIII. Distribution Investment Recovery Mechanism, VIII.B. Distribution System Planning and Analysis*)<sup>471</sup>

To address the variances between the Company’s proposed and actual execution of Year 1 of the current Distribution Investment Recovery Mechanism (IRM), and to ensure that investments are addressing equity concerns and benefitting customers, the Commission should proceed cautiously before extending the IRM in light of the issues raised by the current IRM, including the ongoing and incomplete reconciliation process. Doing so is necessary to ensure accountability and transparency of the IRM, especially with regard to investments targeted to EJ communities.

In Case No. U-21585, the Commission approved the Company’s current IRM, which is set to expire on February 28, 2026.<sup>472</sup> In that case, the Commission approved an increase in Year 2 IRM funding from \$49.3 million to \$86.3 million to pay for reliability investments the Commission found to be “reasonable and prudent.”<sup>473</sup>

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<sup>471</sup> UCC believes the following are relevant for this issue:

**Relevant Testimony:** Cira-Reyes Direct Testimony at 2 TR 1805–10; Daly Direct Testimony at 2 TR 622; Dauphinais Direct Testimony at 6 TR 3634–36; 3645–50; Davis Direct Testimony 4 TR 2665; Connolly Direct Testimony at 2 TR 129–31; Evans Direct Testimony at 6 TR 4448–53; Evans Rebuttal Testimony at 6 TR 4457–58; Fitzhenry Direct Testimony at 6 TR 3712–13; Kelly Direct Testimony at 2 TR 970, 979, 1021–27; Kelly Rebuttal Testimony at 2 TR 1125–26, 1168–69; Myers Direct Testimony at 2 TR 1337–38, 1349–52; Myers Rebuttal Testimony at 2 TR 1363–67.

**Other Relevant Authorities:** *In re: Application of Consumers Energy Company for authority to increase its rates for the generation and distribution of electricity and for other relief*, MPSC Case No. U-21585, Order (Mar. 21, 2025) at 365; *In re: Application of Consumers Energy Company for authority to reconcile its electric distribution investment recovery mechanism and for other relief*, MPSC Case No. U-21918, Kelly Direct Testimony (May 30, 2025); *In re: Application for Consumers Energy Company for authority to increase its rates for the generation and distribution of electricity and for other relief*, MPSC Case No. 21389, Order (Mar. 1, 2024) at 272–73; Replies to Exceptions of Urban Core Collective (Jan. 23, 2024).

<sup>472</sup> MPSC Case No. U-21585 Order at 360–66 (Mar. 21, 2025).

<sup>473</sup> MPSC Case No. U-21585 Order at 365 (Mar. 21, 2025); Cira-Reyes Direct Testimony at 2 TR 1805.

In the instant rate case, the Company seeks to extend the current IRM by two years, beginning on May 1, 2026,<sup>474</sup> and ending on April 30, 2028.<sup>475</sup> For the extended IRM, the Company proposes \$352.28 million in additional expenditures.<sup>476</sup> The Company proposes to include two new programs in the extended IRM: a Repetitive Outages – LVD sub-program, which would account for 8.6% of total proposed expenditures, or \$30.34 million, and the Vulnerable Communities Resiliency Plan (VCRP), which would account for 8.5% of total proposed expenditures, or \$30 million.<sup>477</sup> For the existing programs, the Company proposes to expend 78.4% of funds, or \$276.19 million, on Lines Reliability – LVD (Targeted Circuit Improvements and Pole Replacements); 3.3%, or \$11.65, million on Resiliency – Fractionalization; and 1.2%, or \$4.1 million, on System Protection.<sup>478</sup>

The Company pursues an extension of the IRM despite overspending on projects associated with the IRM generally, underspending in particular investment areas, and not meeting all project deadlines during Year 1. The Company’s proposed investments in the VCRP address important equity and justice concerns. However, greater transparency on how planned expenditures align with actual costs and implementation is necessary to ensure these investments support EJ communities.

### **1. The Company Did Not Follow Its Plan for Year 1 IRM Expenditures.**

In Year 1 of the current IRM, the Company overspent on certain IRM-related projects, underspent in particular areas, and did not meet all project timelines. The Company overspent on the Lines Reliability – LVD by \$16.8 million overall, or more than 45% higher than the

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<sup>474</sup> Myers Direct Testimony at 2 TR 1349.

<sup>475</sup> Kelly Direct Testimony at 2 TR 1021.

<sup>476</sup> Myers Direct Testimony at 2 TR 1350, tbl. 2 (IRM Expenditures).

<sup>477</sup> Kelly Direct Testimony at 2 TR 1022–23.

<sup>478</sup> Kelly Direct Testimony at 2 TR 1023.

Commission approved,<sup>479</sup> when the corresponding activity-based performance metrics did not increase by 45%.<sup>480</sup> It also underspent in the Resiliency – Fractionalization program by \$981,000.<sup>481</sup> The Company also did not meet Year 1 project timelines for its Resiliency – Fractionalization program projects due to delays in securing permits and easements.<sup>482</sup> The approved spending for the four fractionalization projects in the Resiliency – Fractionalization program was \$8.973 million.<sup>483</sup> The Company spent approximately \$8 million on the Resiliency – Fractionalization program—or less than what was approved—and it completed only one out of the four planned projects.<sup>484</sup>

When deciding whether to authorize the IRM in this case, the Commission should proceed with caution, considering the Company’s past performance, which will be taken into account during the ongoing reconciliation process in Case No. U-21918. The Commission’s rationale for approving the IRM in U-21585 was based on the principles of accountability and transparency. The Commission justified its approval of the IRM Year 2 increase by noting that “the IRM presents the not insignificant benefit of ensuring that the amounts that are approved for particular work will actually be spent on that work or else be refunded to customers.”<sup>485</sup> To this end, the Commission should track closely the docket in U-21918 so that the spending and implementation issues in the current IRM can be clarified and addressed in any future IRM and understood as the Commission decides whether to approve Consumers’ proposal here. Through the reconciliation process, the

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<sup>479</sup> Kelly Direct Testimony at 2 TR 1025, line 6, fig. 33; *id.* at 2 TR 1026 line 0 fig. 34.

<sup>480</sup> MPSC Case No. U-21918, Kelly Direct Testimony at 7, fig. 3 (May 30, 2025).

<sup>481</sup> Kelly Direct Testimony at 2 TR 1025, line 6, fig. 33; *id.* at 2 TR 1026 line 0 fig. 34. (approved amount was \$8,973,000; expended amount was \$7,992,00).

<sup>482</sup> MPSC Case No. U-21918, Kelly Direct Testimony at 4–5. (May 30, 2025); Kelly Direct Testimony at 2 TR 1026.

<sup>483</sup> Kelly Direct Testimony at 2 TR 1025, fig. 33.

<sup>484</sup> Kelly Direct Testimony at 2 TR 1026, fig. 34; Cira-Reyes Direct Testimony at 2 TR 1806–07.

<sup>485</sup> MPSC Case No. U-21585 Order at 365 (Mar. 21, 2025); Cira-Reyes Direct at 2 TR 1805.

Company must explain better why Year 1 spending was \$16.8 million higher than the projected amount of \$36.88 million, i.e. more than 45% higher, when the corresponding activity-based performance metrics did not increase by 45%.<sup>486</sup> While UCC certainly recognizes the benefits of “achiev[ing] the goals set forth in the Reliability Roadmap from Case No. U-20147,” UCC does have concerns from a consumer perspective about the Company spending more than 45% more than planned when the activity-based output metrics did not improve correspondingly.<sup>487</sup> The Company should demonstrate through Year 2 reconciliation that it can complete projects on time and stick to its budget.<sup>488</sup> As Witness Dauphinais of ABATE observed, “[u]nless [ ] care is taken, there is a great risk Consumers’ Distribution IRM will become a mechanism that allows Consumers to unreasonably and greatly expand its distribution investments at the expense of its ratepayers, regardless of the need and cost effectiveness of those investments . . . .”<sup>489</sup>

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<sup>486</sup> MPSC Case No. U-21918, Kelly Direct Testimony at 7, fig. 3 (May 30, 2025). Miles of Targeted Circuit Improvements had a target of fifty miles, an actual of fifty-six miles, a difference of six miles, which is 12% more than the target. Lateral Fuses Added had a target of 7,000 fuses, an actual of 8,524 fuses, a difference of 1,524 fuses, which is 21.8% more than the target. LVF Poles Replaced had a target of 300 poles, an actual of 372 poles, a difference of seventy-two poles, which is 24% more than the target. Fractionalization Projects Completed had a target of four projects, an actual of one project, a shortfall of three projects, which is 75% lower than the target. Relay Panels Installed had a target of sixteen panels, an actual of seventeen panels, a difference of one panel, which is 6.3% more than the target. *See id.* While it would be unreasonable to expect a direct correspondence between the additional percentage expended and the amount of additional activity generated, these figures are sufficiently different that it raises questions about the Company’s ability to plan and manage expenditures.

<sup>487</sup> MPSC Case No. U-21918, Kelly Direct Testimony at 6.

<sup>488</sup> The Company agrees that overspending and implementation issues can be addressed in the reconciliation process in U-21918. *See Kelly Rebuttal Testimony at 2 TR 1168–69.*

<sup>489</sup> Dauphinais Direct Testimony at 6 TR 3648.

For the above reasons, the Commission should:

- (1) First, proceed cautiously before approving the proposed IRM extension in this case given the outstanding reconciliation issues in U-21918.
- (2) Second, track the reconciliation process in U-21918 so that the Commission understands the information in that case and interactions with the issues before the Commission in this case.
- (3) Third, mandate quarterly reporting on project completion rates, spending versus budget, and equity outcomes in any extended IRM going forward. Such a short-term model would create “greater accountability for the utility to follow through on promised investments while providing intervenors and consumer watchdogs sufficient opportunity to scrutinize spending outcomes.”<sup>490</sup>
- (4) Fourth, return funds to ratepayers in compliance with the Commission’s Order in U-21585 if the reconciliation process in U-21918 reveals that funds designated for particular work were not spent as the Commission has directed.<sup>491</sup> The Company has stated it will return funds, and the Commission should ensure that any necessary refunds are distributed to ratepayers promptly.<sup>492</sup>

## **2. The Company’s Analysis of the Equity of Its IRM Investments Needs to be Improved to Comply with the Commission’s Order in Case No. 21389.**

The Company’s reconciliation applications need to provide more information, as ordered by the Commission, on whether IRM investments are yielding equitable results. In U-21389, UCC asked for clarity on the approach the Commission would use during the reconciliation process to

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<sup>490</sup> Cira-Reyes Direct Testimony at 2 TR 1809.

<sup>491</sup> See MPSC Case No. U-21585 Order at 365 (Mar. 21, 2025).

<sup>492</sup> See Connolly Direct Testimony at 2 TR 130 (explaining that “[i]f, for example, the actual IRM revenue requirement fell short of the Commission-approved amount collected through the surcharge, then the Company would refund customers the difference”).

“assess the equity of the IRM investments.”<sup>493</sup> Specifically, UCC expressed concern that “given the lack of clarity on how equity can be reviewed in a reconciliation proceeding,” any equity concerns expressed by intervenors during the reconciliation process and “after the IRM has been approved and expenditures have been made, will neither be able to impact the direction of the Company’s investments nor protect ratepayers from the imprudence of such investments.”<sup>494</sup> In response, the Commission approved a two year, as opposed to a three year, IRM “to allow time . . . for reevaluation to take place as to whether the IRM should continue beyond Year 2.”<sup>495</sup> It noted that “[t]his review of whether the IRM should continue will consider how the concerns raised by UCC . . . and others are addressed and whether they outweigh the benefits of the IRM.”<sup>496</sup> The Commission then ordered the Company to provide evidence on whether the IRM investments are “being deployed equitably, whether the investments exacerbate or perpetuate racial or socioeconomic disparities in service, whether there has been a positive impact on reliability and resilience, whether there is sufficient opportunity for scrutiny of the investments, and whether customers have benefitted from the IRM mechanism.”<sup>497</sup>

The Company’s current reconciliation application reports that for the Year 1 IRM, it spent \$6.3 million in EJ communities, or 9.5% of the total \$66.1 million in spending.<sup>498</sup> “Witness Kelly notes that this percentage compares favorably to the percentage of EJ communities in the Company’s service territory, which varies from 4.1% to 9.2% depending on definitions.”<sup>499</sup> The Company concludes that these figures demonstrate that it deployed its investments in an “equitable

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<sup>493</sup> MPSC Case No. U-21389 Replies to Exceptions of Urban Core Collective at 11 (Jan. 23, 2024).

<sup>494</sup> MPSC Case No. U-21389 Replies to Exceptions of Urban Core Collective at 12 (Jan. 23, 2024).

<sup>495</sup> MPSC Case No. U-21389 Order at 272 (Mar. 1, 2024).

<sup>496</sup> MPSC Case No. U-21389 Order at 272–73 (Mar. 1, 2024).

<sup>497</sup> MPSC Case No. U-21389 Order at 273 (Mar. 1, 2024).

<sup>498</sup> MPSC Case No. U-21918 Kelly Direct Testimony at 8 (May 30, 2025); *see also* Kelly Direct Testimony at 2 TR 1027.

<sup>499</sup> Cira-Reyes Direct Testimony at 2 TR 1808.

manner.”<sup>500</sup> Witness Kelly also notes that the VCRP provides “one clear mechanism” for investing EJ communities.<sup>501</sup>

The Company’s analysis should demonstrate better whether its investments have addressed equity concerns.<sup>502</sup> As Witness Cira-Reyes stated:

While I appreciate that EJ communities received a significant portion of the spending in the Year 1 IRM, I do not know how the expenditures on EJ communities compare to the overall need in EJ communities. In other words, it is entirely possible that the Company should have devoted an even higher percentage of funds to EJ communities if their needs were proportionately greater. To that end, it would have been helpful if the Company could have tied the analysis of its Year 1 IRM in the reconciliation case and this case to the needs in EJ communities. Doing so would have spoken more directly to the Commission’s mandate . . . .<sup>503</sup>

Investment in vulnerable communities is commendable, but transparency on how these investments ultimately align with the needs in EJ communities is currently lacking. While the Company’s analysis is a step in the right direction, and while UCC appreciates that the Company proposes “to include the VCRP in the IRM precisely because it is important to invest in Environmental Justice (“EJ”) communities”<sup>504</sup> and that “the IRM provides a backstop to ensure that the investments are made,”<sup>505</sup> more information is needed to fulfill the Commission’s mandate for reporting on whether investments are “being deployed equitably,” “whether the investments exacerbate or perpetuate racial or socioeconomic disparities in service,” and other matters.<sup>506</sup>

In order to fully comply with the Commission’s order in U-21918, the Company must report “more thoroughly on the linkage between the percentage of investments in EJ communities

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<sup>500</sup> Kelly Direct Testimony at 2 TR 1027.

<sup>501</sup> Kelly Rebuttal Testimony at 2 TR 1126.

<sup>502</sup> Cira-Reyes Direct Testimony at 2 TR 1807–09.

<sup>503</sup> *Id.* at 2 TR 1808.

<sup>504</sup> Kelly Direct Testimony at 2 TR 1125.

<sup>505</sup> *Id.* at 2 TR 1125.

<sup>506</sup> MPSC Case No. U-21389 Order at 273 (Mar. 1, 2024).

relative to the needs of those communities.”<sup>507</sup> The Company’s actual and planned investments in vulnerable communities are an important step and are welcomed. But while the Company asserts that “the IRM provides a backstop to ensure that the investments are made, with the Company required to provide refunds if the Company does not make the full investments,”<sup>508</sup> it is clear from the Company’s Year 1 reconciliation reporting that a more robust backstop is warranted. Without more detailed reporting and analysis on the relationship between the Company’s investments and the improvement ratepayers in EJ communities actually require, there is a risk that EJ ratepayers will not benefit from the IRM as much as they need and should. As Witness Cira-Reyes noted more generally, “ratepayers should not continuously absorb unexpected cost increases and less than anticipated reliability improvements.”<sup>509</sup>

For the above reasons, the Commission should:

- (1) First, proceed cautiously before approving the proposed IRM extension in this case, given that the Company has not fully complied with the Commission’s order in U-21918 to complete an equity analysis that looks at needs and impacts, and not just shares of spending.
- (2) Second, reaffirm its commitment to accountability by mandating a comprehensive equity evaluation in the reconciliation process that demonstrates the actual benefits of investments in EJ communities.
- (3) Third, order quarterly reporting on equity outcomes that directly links the Company’s investments in EJ communities to the needs of those communities.

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<sup>507</sup> Cira-Reyes Direct Testimony at 2 TR 1809.

<sup>508</sup> Kelly Rebuttal Testimony at 2 TR 1125–26.

<sup>509</sup> Cira-Reyes Direct Testimony at 2 TR 1807.

**F. Consumers Energy Must Improve Engagement with LMI and EJ Communities.**  
(Issue III.A.8. Customer Experience and Operations Capital Expenditures, VIII.D. Customer Assistance Programs and Affordability)<sup>510</sup>

Consumers Energy has not engaged sufficiently with vulnerable customers on issues of affordability, reliability, and environmental justice, instead prioritizing customer engagement activities that focus on sales and service over meaningful community engagement. “Community engagement is when an organization works to build lasting relationships to apply a collective vision that benefits the entire community.”<sup>511</sup> It is an active method of implementing change in a community by utilizing two-way, collaborative communication, such as educational programs, and events, such as town halls, to raise awareness of what an organization is doing.<sup>512</sup> Customer engagement is when a company representative engages one-on-one with a customer to “facilitat[e] program enrollment and product selection to meet customer [ ] needs.”<sup>513</sup> This can include providing “vulnerable customers with information and enrollment in assistance programs.”<sup>514</sup> While these individual conversations can be helpful, often these interactions are sales and service-oriented and focused on a single customer.<sup>515</sup> The distinction between community and customer engagement is important in determining the purpose of the Company’s engagement efforts and assessing whether Consumers is tailoring its engagement to meet the needs of the vulnerable communities it serves.<sup>516</sup>

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<sup>510</sup> UCC believes the following are relevant to this issue:

Relevant Testimony: Baker Rebuttal Testimony at 3 TR 777–83; Byrom Direct Testimony at 3 TR 967.21–381, 967.41–43; Byrom Rebuttal Testimony at 3 TR 967.52–71; Cira-Reyes Direct Testimony at 3 TR 2310–11, 2346–54; Williams Direct Testimony at 3 TR 2399–2404; Klocke Direct Testimony at 6 TR 4324–39.

<sup>511</sup> Cira-Reyes Direct Testimony at 3 TR 2346.

<sup>512</sup> *Id.* at 3 TR 2346.

<sup>513</sup> Byrom Direct Testimony at 3 TR 967.10.

<sup>514</sup> *Id.* at 3 TR 967.10.

<sup>515</sup> Cira-Reyes Direct Testimony at 3 TR 2346.

<sup>516</sup> *Id.* at 3 TR 2347.

UCC’s two witnesses have testified about the shortcomings of the Company’s current outreach and the need for changes in the Company’s practices. According to UCC Witness Cira-Reyes, Consumers’ current outreach efforts are primarily one-way, focusing on notifying customers about energy-saving initiatives rather than engaging in true two-way community dialogue to solicit feedback on key community concerns, such as affordability and reliability.<sup>517</sup> UCC Witness Williams has firsthand experience with numerous communication challenges involving the Company; as a result, she recommends that the Company proactively engage with “community leaders and organizations in low-income communities and communities of color.”<sup>518</sup>

The Commission should ensure that, as part of the Company’s proposed investments, the Company engages in meaningful data collection, reports transparently, and demonstrates program improvements, and that it connects better with EJ communities about their concerns. The Company has requested more than \$7 million in ratepayer recovery for Analytics and Outreach, Digital Customer Operations, and efforts to improve customer support to LMI customers through the LMI Customer Support Enhancement Project—investments that the Company claims will increase customer support and program enrollment.<sup>519</sup> Such efforts could be valuable if they lead to increased enrollments in affordability programs, such that more customers receive more assistance than they have in the past. Therefore, the Commission should require the Company to file detailed reports on the effectiveness of these customer support and engagement programs, including specific enrollment through these efforts for payment assistance programs, tangible examples of efficiencies achieved, and recommendations for program improvements based on actual results. The Company should also be required to ensure that customers are aware of the various assistance

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<sup>517</sup> *Id.* at 3 TR 2353.

<sup>518</sup> Williams Direct Testimony at 3 TR 2378.

<sup>519</sup> *See generally* Byrom Direct Testimony at 3 TR 967.26; 3 TR 967.43; 3 TR 967.10.

programs available to them and demonstrate that their spending towards such programs and engagement is leading to tangible change.<sup>520</sup> Finally, the Company can and should also meaningfully engage with communities through proactive outreach on issues related to affordability and reliability and through collaborations with environmental justice organizations to ensure that ratepayer dollars deliver real value to customers, especially those who need it the most.

**1. The Commission Should Require Consumers Energy to Report on the Efficacy of the Low-Moderate Income Customer Support Enhancement Project.**

While the goals of the Low Moderate Income Customer Support Enhancement Project are laudable, the Company should demonstrate more clearly that the project has led to more customers receiving more assistance and to improving awareness of the program's existence. Despite the program being operational since December 2024, community witness testimony demonstrates that customers continue to face enrollment barriers and communication challenges. Additionally, the program's reliance on technology-based solutions risks excluding the most vulnerable customers, including elderly residents, people with disabilities, non-English speakers, and those without reliable internet access. To ensure accountability and transparency, the Commission should require the Company to report on the program's efficacy, including specific enrollment metrics for payment assistance programs and benefits delivered to LMI households.

The Company requests \$1.87 million in the instant case to support the Low Moderate Income ("LMI") Customer Support Enhancement project, which is "designed to support LMI customers in reducing their utility bill expenses by driving greater awareness and enrollment into eligible programs and services."<sup>521</sup> The LMI project has been operational since December 2024, with the primary goals of "proactively communicat[ing] with LMI customers before they reach a

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<sup>520</sup> Cira-Reyes Direct Testimony at 3 TR 2353–54.

<sup>521</sup> Byrom Direct Testimony at 3 TR 967.26.

crisis point, deliver[ing] personalized experiences that anticipate each customer's needs and preferences, and simplify[ing] the enrollment process for assistance programs.”<sup>522</sup> As described by the Company’s own testimony, “LMI customers [need help] in reducing their utility bill expenses by driving greater awareness and enrollment into eligible programs and services[,] alleviat[ing] energy burden, reduc[ing] the risk of service disconnections due to unpaid bills, and [ ] ultimately improv[ing] household stability.”<sup>523</sup> As the Company’s Witness Byrom explains, the project was initially conceived in response to the Company’s recognition that: “1) only 1 in 6 LMI customers engage in assistance programs, 2) 36% of Consumers Energy customers assumed they are not eligible for utility payment assistance, 3) 33% of customers lacked awareness of available assistance, and 4) 18% did not know where to start the application process.”<sup>524</sup> The project focuses on four core functions: (1) simplified program enrollment; (2) proactive communication and customer awareness; (3) new and improved LMI offerings, and (4) continuous improvement.<sup>525</sup> The Company has testified that in the first four months of deployment, more than 55,000 customers have interacted with the tool, and 22% of interested customers have enrolled in some program.<sup>526</sup>

Community witness testimony indicates that vulnerable customers continue to face challenges despite the program’s implementation a year ago in December 2024.<sup>527</sup> Community Witness Williams testified that she “primarily contacts Consumers Energy by telephone because [she] need[s] to be able to ask questions and get real-time responses . . . . However, Consumers

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<sup>522</sup> *Id.* at 3 TR 967.27.

<sup>523</sup> *Id.* at 3 TR 967.26.

<sup>524</sup> Byrom Rebuttal Testimony at 3 TR 967.61.

<sup>525</sup> Byrom Direct Testimony at 3 TR 967.27.

<sup>526</sup> *Id.* at 3 TR 967.30.

<sup>527</sup> *See* Williams Direct Testimony at 3 TR 2396–98 (stating that the Company’s “responsiveness is generally poor and inconsistent. [Her] needs are almost never met with just one phone call . . . personalized assistance is not consistently available . . . [and] communication failures have real consequences for the families [she] serve[s]”).

Energy is not easily reachable by phone . . . and the process is often inadequate.”<sup>528</sup> Witness Williams further describes challenges with payment assistance program enrollment, a stated goal of the LMI Customer Support Enhancement Project, stating that “[i]t is very difficult, if not impossible, to sign up for any of these programs directly with Consumers Energy; I have needed assistance from other organizations, such as True North, to sign up for payment assistance programs . . . . I mostly hear about payment assistance programs at events like community fairs or through word of mouth.”<sup>529</sup> Witness Cira-Reyes states that “often customers do not receive information on the programs that are most beneficial for them, as it is hidden among a wider array of less beneficial offerings . . . . [And] most of Consumers’ communications with ratepayers are one-way.”<sup>530</sup>

A disproportionate focus on technology as a mode of engaging with community members can create barriers for the most vulnerable.<sup>531</sup> While the Company states in their rebuttal testimony that the “LMI digital tool was developed to address the very persistent challenges . . . such as lack of awareness, confusion about eligibility, and difficulty navigating the application process,”<sup>532</sup> according to Witness Cira-Reyes, it is important to remember that “IT solutions are not the end-all, be-all . . . .”<sup>533</sup> As Witness Williams testifies, “elderly residents, people with disabilities, families where English isn’t the primary language, and those without reliable internet access” are most likely to face barriers from digital customer service. These are the community members who are often most in need. Witness Williams also states that this can lead to serious accessibility issues, notably for “people with disabilities who cannot read proficiently or comprehend the information

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<sup>528</sup> *Id.* at 3 TR 2396.

<sup>529</sup> Williams Direct Testimony at 3 TR 2390.

<sup>530</sup> Cira-Reyes Direct Testimony at 3 TR 2348–49.

<sup>531</sup> Williams Direct Testimony at 3 TR 2396.

<sup>532</sup> Byrom Rebuttal Testimony at 3 TR 967.63.

<sup>533</sup> Cira-Reyes Direct Testimony at 3 TR 2351.

sent to them” or who would not be able to navigate online systems, such as Witness Williams’ son, who has a cognitive disability.<sup>534</sup> Vulnerable individuals like Witness William’s son require personalized assistance which is not consistently available through digital customer service platforms that are largely dependent on technology.<sup>535</sup> While it is positive that “69% of surveyed customers rate[ ] the tool ‘extremely easy to use,’”<sup>536</sup> it is important that the Company takes concrete steps to improve that score, especially so that the most vulnerable and those for whom technology can be challenging can access to the assistance they need.

As Witness Cira-Reyes states, Consumers’ customers report that even after the adoption of the program, “many members of the community have expressed difficulties in either contacting Consumers for information on affordability programs or reliability issues.”<sup>537</sup> Consumers’ adoption of the LMI Customer Enhancement Program also does not account for customers, like Community Witness Williams, who have become disillusioned with Consumers’ prior customer support during outages. Witness Williams testifies that she “no longer feel[s] that there is any point in reaching out. Every time [she] call[s], [she] listen[s] to the same recorded message . . . . [She] was hardly ever able to speak with a person . . . . [So she] no longer call[s] to ask questions right away when the power goes out.”<sup>538</sup> These prior experiences create a barrier that will need to be overcome.

While 78,000 customers have engaged with the tool since its launch, of which 52,000 were new LMI self-identifications,<sup>539</sup> it is unclear if more customers are receiving more assistance as a result. The Company reports that “35% completed the full eligibility assessment, successfully

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<sup>534</sup> Williams Direct Testimony at 3 TR 2397.

<sup>535</sup> *Id.* at 3 TR 2397–98.

<sup>536</sup> Byrom Rebuttal Testimony at 3 TR 967.64.

<sup>537</sup> Cira-Reyes Direct Testimony at 3 TR 2351–52.

<sup>538</sup> Williams Direct Testimony at 3 TR 2388.

<sup>539</sup> Byrom Rebuttal Testimony at 3 TR 967.64.

identifying one or more programs for which they qualify” and that “25,000 customers have completed the enrollment flow, and nearly 20% enrolled in more than one offering.”<sup>540</sup> Besides the engagement numbers, the Company has noted the digital enrollment of 515 low-income customers in the Company’s Green Giving Program,<sup>541</sup> a program available to assist customers in lowering their overall energy usage that also provides bill credits,<sup>542</sup> and a reduction in the need to send 300,000 emails “to promote individual products to reach enrollment goals.”<sup>543</sup> While these numbers certainly sound positive, it is unclear how many customers have enrolled in offerings in which they were not already enrolled or if they are now receiving more assistance in the programs in which they are currently enrolled. The Company has not provided information on any incremental enrollments in CARE MB, RIA, or LIA credits—which are the company’s other current payment assistance programs—as a result of the initiative, which are described in more detail in Section A.2.<sup>544</sup> Successful implementation of the program will need to ensure that it is more than “simply [ ] a new way to disseminate [ ] information” that is already available to customers.<sup>545</sup>

While the stated goals of the LMI Customer Enhancement Program are a step in the right direction, accountability and transparency are necessary to ensure that this effort adds incremental value to the lives of LMI customers. To ensure the tool is “delivering on its intended purpose,”<sup>546</sup> the Commission should order the Company to report publicly on a quarterly basis on the benefits delivered to all customers, particularly LMI customers, and the costs incurred to secure those

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<sup>540</sup> *Id.*

<sup>541</sup> *Id.* at 967.64–65.

<sup>542</sup> *Id.* at 967.72.

<sup>543</sup> *Id.* at 3 TR 967.65.

<sup>544</sup> Byrom Direct Testimony at 3 TR 967.30–31; Byrom Rebuttal Testimony at 3 TR 967.64–65.

<sup>545</sup> Klocke Direct Testimony at 6 TR 4332.

<sup>546</sup> Byrom Direct Testimony at 3 TR 967.32.

benefits. Reporting should include: (1) the number of new LMI customers enrolled in payment assistance programs, (2) the average amount of assistance they receive through each program, (3) funding allocated to personalized, rather than technology-forward, customer service and engagement for vulnerable populations, and (4) documented improvements based on enrollment data and customer feedback. This reporting will provide the Commission, intervenors, and community members with the information necessary to assess the efficacy of the LMI Customer Enhancement Project, ensure continuous improvements are actually occurring, and verify that recovered costs align with demonstrated benefits.<sup>547</sup>

**2. The Commission Should Require Consumers Energy to Provide Information on How Analytics and Outreach and Digital Customer Operations Expenses Directly Benefit Consumers.**

The Company proposed more than \$4 million of investment in Analytics and Outreach and Digital Customer Operations for the test year. Consumers has projected \$2.88 million in operating and maintenance (“O&M”) expenses for a test year ending April 30, 2027, for Analytics and Outreach efforts.<sup>548</sup> According to the Company, O&M expenses “allow the Company to more efficiently utilize its resources, target communications to precise customer segments, and select, develop, and implement programs that are most likely to provide customer value.”<sup>549</sup> In addition, the Company is projecting approximately \$1.34 million of O&M expenses for the test year ending April 30, 2027, to continue Digital Customer Operations (“DCO”) work, which is “responsible for the operation and continuous improvement of the Company’s customer-facing digital applications, including its website and mobile application.”<sup>550</sup>

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<sup>547</sup> Cira-Reyes Testimony at 3 TR 2353–54.

<sup>548</sup> Byrom Direct Testimony at 3 TR 967.43.

<sup>549</sup> *Id.* at 3 TR 967.42.

<sup>550</sup> *Id.* at 3 TR 967.10.

Because the Company has not provided sufficient information about how these expenditures benefit ratepayers, the Commission should reject them. While efficiency and program development sound like fine goals, the Company has not provided specific examples of the kinds of efficiencies that similar efforts have identified in the past or that are expected to be identified by these investments. Similarly, it has not provided tangible examples of projects past, present, or future. Before approving such expenditures, the Commission should require the Company to provide information on how Analytics and Outreach efforts “directly benefit and engage with customers and how information received is analyzed, responded to where appropriate, and meaningfully addressed when making decisions.”<sup>551</sup> Lack of transparency on these expenditures means that this money could be used for activities that do not actually benefit ratepayers, such as marketing and advertising, rather than meaningful customer engagement activities.<sup>552</sup> Before approving such investments, the Commission must require the Company to provide more detailed information—and not unsupported generalizations—about how such funds are directly benefiting and engaging customers.

While Company Witness Byrom states in her rebuttal testimony that the Company “uses journey mapping to proactively identify customers who may need help in the future” and provides “millions of dollars in gift funding to support customers,”<sup>553</sup> her statements lack the support necessary to assess the effectiveness of these efforts. The Company fails to disclose which customers have been identified through journey mapping, how many customers have been contacted, or how many have been successfully enrolled in assistance programs as a result. Additionally, the Company does not provide a breakdown of where the “millions of dollars in gift

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<sup>551</sup> Cira-Reyes Direct Testimony at 3 TR 2352–53.

<sup>552</sup> *Id.* at 3 TR 2353.

<sup>553</sup> Byrom Rebuttal Testimony at 3 TR 967.67–68.

funding” is allocated, which customers receive it, or how much individuals benefit. While these efforts could be providing meaningful and welcome support, without concrete data on reach, enrollment outcomes, and actual assistance delivered, it is unclear how these initiatives are delivering actual value to customers

### **3. Consumers Energy Should Actively Engage with EJ Organizations to Improve Community Engagement.**

The Company’s failure to partner with environmental justice organizations and its lack of plans to do so in the future represent missed opportunities for the Company, the organizations, and the environmental justice communities. Environmental justice groups support community members who face energy insecurity and can offer valuable insights into community concerns about the affordability of rate increases, reliability of service, the effectiveness of program implementation, environmental concerns, and many other issues.<sup>554</sup> These partnerships are particularly important in light of the Company’s stated goals of connecting better with LMI Customers, such as through the LMI Customer Support Enhancement Program.

The Company has not engaged sufficiently with environmental justice organizations in the past. Community Witness Williams states, “Through Parents for Healthy Homes and my other community work, I see firsthand how people struggle with Consumers Energy’s programs and services. I know what barriers prevent people from accessing help, and . . . what would make their programs more effective. But I have never seen the Company show any interest in that kind of community input.”<sup>555</sup>

The Company is missing opportunities to partner with environmental justice organizations going forward. In listing the kinds of community organizations with which the Company plans to

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<sup>554</sup> See Ciria-Reyes Direct Testimony at 3 TR 2352.

<sup>555</sup> Williams Direct Testimony at 3 TR 2400.

collaborate in the future, the Company does not mention any environmental justice groups, instead listing human services agencies, faith-based organizations, food banks and housing assistance providers, education institutions, and workforce development programs.<sup>556</sup> While these organizations certainly provide valuable assistance to communities and persons in need, not including environmental justice organizations is a loss, according to Witness Cira-Reyes, “[since] [e]nvironmental justice groups work with community members who experience energy insecurity and have concerns over rate increases and can provide valuable insight into community concerns.”<sup>557</sup> By failing to demonstrate an intent to collaborate with environmental justice groups, the Company is forgoing easily accessible opportunities to better engage with community members,<sup>558</sup> especially as it seeks to improve customer engagement through the LMI Customer Support Enhancement Program.

Additionally, EJ organizations can help provide more opportunities for community members to provide feedback or engage more directly with the Company.<sup>559</sup> UCC Witness Cira-Reyes notes that in his experience, the Company often engages through resource fairs, advertising events, or as sponsors for larger events.<sup>560</sup> When the Company is present at these events, UCC Witnesses have testified that the Company often engages in one-way communication focused on issues that are not of immediate concern to environmental justice communities.<sup>561</sup> To engage meaningfully with community members on key issues, it is important that the Company

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<sup>556</sup> Ex. UCC-45, Consumers Energy Company’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0237 at 3–4 (mentioning Michigan 2-1-1; local nonprofits and human services agencies; faith-based organizations and community centers; food banks and housing assistance providers; educational institutions and workforce development programs; and health and human services agencies).

<sup>557</sup> Cira-Reyes Direct Testimony at 3 TR 2352.

<sup>558</sup> Williams Direct Testimony at 3 TR 2400.

<sup>559</sup> Cira-Reyes Direct Testimony at 3 TR 2349.

<sup>560</sup> *Id.* at 3 TR 2348.

<sup>561</sup> *Id.* at 3 TR 2353; Williams Direct Testimony at 3 TR 2399.

proactively reach out to EJ communities and offer accessible opportunities for dialogue on affordability and reliability issues.<sup>562</sup> The Company could, for example, hold town halls and focus groups with representative members of the community and report on the feedback the Company has received from community members and how the Company is addressing such feedback in its operations.<sup>563</sup> Meaningful community engagement requires that the Company engage in two-way communication and dialogue with the customers and communities that it serves.

For the above reasons, UCC respectfully requests that the Commission:

- (1) Order the Company to report publicly on a quarterly basis on the benefits delivered to all customers, particularly LMI customers, and the costs incurred to secure those benefits as a part of the LMI Customer Support Enhancement Project. Reporting should include: (a) the number of new LMI customers enrolled in payment assistance programs as a result of these efforts, (b) the number of LMI customers enrolled in payment programs currently who enroll in additional programs, (c) the average amount of assistance they receive through each program, (d) funding allocated to personalized, rather than technology-forward, customer service and engagement for vulnerable populations, and (e) documented improvements based on enrollment data and customer feedback.
- (2) Require the Company to provide information on how Analytics and Outreach efforts “directly benefit and engage with customers and how information received is analyzed, responded to where appropriate, and meaningfully addressed when making decisions.”<sup>564</sup> Before approving such investments, the Commission must require the

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<sup>562</sup> Williams Direct Testimony at 3 TR 2399–400.

<sup>563</sup> Cira-Reyes Direct Testimony at 3 TR 2354.

<sup>564</sup> *Id.* at 3 TR 2352–53.

Company to provide more details and information about how such funds are directly benefiting and engaging customers.

- (3) Require that the Company proactively reach out to EJ communities and offer accessible opportunities for dialogue on affordability and reliability issues, such as town halls and focus groups with representative members of the community. Additionally, the Commission should require the Company to report on the feedback the Company is receiving from community members and how it is addressing that feedback.

[The next section starts at the top of the next page]

**G. The Commission Should Disallow Recovery of Corporate Membership Dues Because the Company Failed in Its Application to Provide Sufficient Evidence of Benefits to Ratepayers and Because Several Memberships Fund Advocacy Contrary to Ratepayer Interests. (*Issue V.C. Other O&M Expense*)<sup>565</sup>**

Consumers Energy seeks to recover \$830,705 in corporate membership dues from ratepayers<sup>566</sup> without providing adequate justification or transparency regarding the benefits customers receive from these expenditures and by compelling customers to support organizations that advocate against their interests. The Commission should disallow recovery of these costs. An electric utility seeking a rate increase must include sufficient evidence in its initial application to demonstrate that its rates are “just and reasonable.”<sup>567</sup> This requires reasonability in recovered costs that are passed onto customers through those rates. Both the Michigan Constitution and the state’s Administrative Procedure Act clarify that this is a demanding evidentiary burden, as all Commission orders must be supported by “competent, material, and substantial evidence.”<sup>568</sup>

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<sup>565</sup> UCC believes the following are relevant to this issue:

Relevant Testimony: Cira-Reyes Direct Testimony at 3 TR 2354–70; Foster Direct Testimony at 5 TR 3354–55; Foster Revised Rebuttal Testimony at 5 TR 3369–74; Foster Cross Examination at 5 TR 3375–3409, 3425–33.

Other Relevant Authorities: MCL § 460.557; MCL § 24.285; Const 1963, art 6, § 28, cl 2; U.S. Const. amend. I; *In re DTE Electric Co.*, 2021 WL 743782, at \*3–4 (Mich. App. Feb. 25, 2021); *Ford Motor Co. v. Public Service Comm’n*, 221 Mich. App. 370, 385 (1997); *In re DTE Electric Co.*, MPSC Case No. U-21297; *In re Consumers Energy Co.*, MPSC Case No. U-15245; *Gitlow v. People of N.Y.*, 268 U.S. 652 (1925); *Wooley v. Maynard*, 430 U.S. 705 (1977); *Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley, Cal.*, 454 U.S. 290 (1981); *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878 (2018); *Roberts v. United States Jaycees*, 468 U.S. 609 (1984); *Buckley v. Valeo*, 424 U.S. 1 (1976); *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977); *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990); *Dowerk v. Charter Twp. of Oxford*, 233 Mich. App. 62, 72 (1998).

<sup>566</sup> Foster Revised Rebuttal Testimony at 5 TR 3374.

<sup>567</sup> MCL § 460.557. Furthermore, relevant case law points to a standard of reasonableness and prudence for recouped utilities costs. “[A]s explained by the PSC, a utility ‘simply recouples’ reasonable and prudent operation and maintenance expenses . . . .” *In re DTE Electric Co.*, 2021 WL 743782, at \*3–4 (Mich. App. Feb. 25, 2021). Or, put simply, “[t]he ratemaking process requires a determination by the PSC of what utility costs and expenses are reasonable and prudent.” *Ford Motor Co. v. Public Service Comm’n*, 221 Mich. App. 370, 385 (1997).

<sup>568</sup> MCL § 24.285; Const 1963, art 6, § 28, cl 2; *see also Dowerk v. Charter Twp. of Oxford*, 233 Mich. App. 62, 72 (1998) (defining “substantial evidence” as “evidence that a reasonable person would accept as sufficient to support a conclusion”).

Thus, evidence provided by an electric utility must likewise be “competent, material, and substantial” to warrant Commission approval.<sup>569</sup> Consumers has failed to meet its burden of proof in the instant case by not providing sufficiently detailed explanations of how these memberships specifically benefit customers, either in its Application or through other materials.

Furthermore, several of these memberships, such as for the Edison Electric Institute (EEI), fund advocacy activities that are demonstrably contrary to customer interests; recovery for these memberships would amount to compelled speech and contravene the U.S. Constitution’s First Amendment Protections. Therefore, the Commission should disallow Consumers’ recovery of all discretionary corporate membership dues. At a minimum, the Commission should categorically reject recovery of membership dues from ratepayers for any organization that engages in political advocacy, including but not limited to the Edison Electric Institute.

**1. Consumers Energy Failed to Provide the Information in its Initial Application Necessary to Justify the Recovery of Costs from Ratepayers.**

Consumers’ Application lacks the transparency, specificity, and substantiation necessary to support recovery of corporate membership fees from ratepayers. Not only has the Company failed to offer specific benefits of these memberships to ratepayers, but the Company’s lack of transparency has also prevented meaningful evaluation by intervenors. The burden of proof rests squarely on the utility to demonstrate in its prima facie case that the requested rates are just and reasonable. Consumers has not met that burden here, so the Commission must not approve recovery in this case.

First, the Company’s presentation of its corporate membership dues is almost entirely lacking in its application. The Company seeks to recover \$830,705, yet this figure does not appear

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<sup>569</sup> MCL § 24.285; Const 1963, art 6, § 28, cl 2; *see also Dowerk v. Charter Twp. of Oxford*, 233 Mich. App. 62, 72 (1998) (defining “substantial evidence” as “evidence that a reasonable person would accept as sufficient to support a conclusion”).

anywhere in its direct testimony.<sup>570</sup> In discovery, when UCC asked the Company to identify where it discussed corporate memberships in its Application, the Company pointed only to a few words of testimony and two line items of an exhibit.<sup>571</sup> The Company pointed to two lines of Witness Foster’s testimony, which simply mentioned “trade association dues and memberships”<sup>572</sup> and “Administrative and Other – These costs are primarily for Edison Electric Institute dues,”<sup>573</sup> respectively. The accompanying exhibit referenced in response to discovery<sup>574</sup> merely included two line items labeled “Sustainability & External Affairs” and “Administration & Other-Electric Portion,” respectively.<sup>575</sup> This exhibit not only did not include specific membership line items, but it also did not include the words “dues,” “membership,” or “disallow” anywhere on it.<sup>576</sup> It was not until the Company provided its rebuttal testimony that it pointed intervenors to a spreadsheet containing historic membership dues calculation methodology and a breakdown of historic dues expenses, Workpaper “WP-PDD-18.”<sup>577</sup> The Workpaper, however, was never entered as an exhibit by the Company.<sup>578</sup> And, even after pointing intervenors to this Workpaper, the figures in the workpaper do not match the requested recovery.<sup>579</sup> The Company did not convert the specific figures in Workpaper WP-PDD-18 to the test year to account for inflation, which Company Witness Foster said in cross examination was the reason for differences between Workpaper figures

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<sup>570</sup> Instead, the figure appears in Foster’s Revised Rebuttal Testimony. Foster Revised Rebuttal Testimony at 5 TR 3374.

<sup>571</sup> See Ex. UCC-68, Consumers Electric’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0236\_ATT\_1 (referencing Witness Foster’s testimony on page 4, line 4 and page 5, lines 29–30 and Ex. A-91, lines 2 and 11).

<sup>572</sup> Foster Direct Testimony at 5 TR 3355.

<sup>573</sup> *Id.* at 5 TR 356.

<sup>574</sup> See Ex. UCC-68, Consumers Electric’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0236\_ATT\_1.

<sup>575</sup> Ex. A-91, Electric Projected Corporate Services O&M Expense (June 2025).

<sup>576</sup> *Id.* (cited by the Company in UCC-68 discovery response attachment).

<sup>577</sup> Ex. UCC-203, Consumers Energy Company Workpaper WP-PPD-18, at 1.

<sup>578</sup> Foster Cross Examination at 5 TR 3379.

<sup>579</sup> See 5 TR 3382–84.

and requested recovery amounts.<sup>580</sup> Notably, the Company also provided no explanation for whether membership dues are a flat fee or increase in line with projected inflation rates.<sup>581</sup>

Despite opportunities to provide clarification, the Company still has not adequately explained the nature of the organizations or activities for which it is seeking recovery. For example, when UCC asked Consumers to “provide a list of all the Company’s corporate memberships” with “the cost of each membership that the Company is requesting to recover in this case,”<sup>582</sup> the Company provided a spreadsheet listing various organizations, including EEI.<sup>583</sup> This separate list, however, did not include one organization, “AEIC,” which was included in Workpaper WP-PDD-18.<sup>584</sup> When asked about this discrepancy during cross examination, Witness Foster defended the exclusion on the grounds that “AEIC is not a corporate membership” under the narrow framing of the description in two pages of his direct testimony.<sup>585</sup> Nowhere in the initial application, discovery responses, or rebuttal testimony did the Company explain what might constitute a corporate membership and what might constitute a different type of membership. And to the extent to which WPP-PDD-18 lists AEIC for “Utility Dues Elec” and not “Corp Giving Dues – Electric,” WPP-PDD-18 also lists EEI under the “Utility Dues Elec” category, yet the Company provided EEI on its list of corporate memberships. Moreover, Witness Foster could not explain the activities included in the categories listed in Workpaper WP-PDD-18, such as “Civic Dues / Other”

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<sup>580</sup> Foster Cross Examination at 5 TR 3387 (calculations do not even appear in the workpaper breaking down sought recovery).

<sup>581</sup> See 5 TR 3386; see also Ex. UCC-72, *Issue & Policy: Reliability, Resilience & Emergency Response*, EDISON ELEC. INST.; Ex. UCC-73, EDISON ELEC. INST., 2025 LOBBYING, ADVOCACY, AND OTHER EXPENDITURES (2025).

<sup>582</sup> Ex. UCC-70, Consumers Electric’s Response to UCC’s First Discovery Request, U21870-UCC-CE-0236, at 1.

<sup>583</sup> Ex. UCC-68.

at 1. The Company listed the Detroit Regional Chamber of Commerce, the Jackson County Chamber of Commerce, Keystone Policy Center, the Michigan Chamber of Commerce, the Michigan Electric and Gas Association, and Edison Electric Institute (EEI). *Id.*

<sup>584</sup> Ex. UCC-203 at 1.

<sup>585</sup> Foster Cross Examination at 5 TR 3404–05.

or “Economic Development.”<sup>586</sup> In sum, the Company has not adequately clarified the nature of the organizations or activities for which it is seeking recovery.

Consumers’ failure to meet its burden of proof in its Application denies ratepayers, intervenors, and the Commission the ability to exercise meaningful oversight over how the Company spends ratepayer money. A residential customer reviewing this rate case application would find it virtually impossible to determine: (a) to which organizations Consumers pays membership dues and fees; (b) how much Consumers has paid each organization; (c) how much Consumers plans to pay each organization in the future; and, as discussed below, (d) what concrete benefits ratepayers receive in exchange. To recover from ratepayers for an expenditure, Consumers must provide in its initial Application substantial evidence to justify a finding that the proposed recovered costs, as factored into the requested rate increase, are just and reasonable. But, in the instant case, Consumers failed to provide substantive, concrete information about corporate memberships in its initial Application. The Commission should therefore not approve the Company’s requested recovery of costs.

**2. The Commission Should Disallow Recovery of Corporate Membership Dues Because Consumers Energy Has Failed to Demonstrate That These Expenditures Provide Sufficient Concrete Benefits to Ratepayers.**

Consumers has failed to provide sufficient, concrete benefits to ratepayers which would justify recovering costs from ratepayers. In a previous Commission order related to recovery of discretionary corporate membership expenses of another utility, DTE Electric, the Commission ordered that “DTE Electric shall provide in its next general rate case a detailed description of how these organizations *specifically* impact/benefit customers . . . , which will convey DTE Electric’s roles and responsibilities in advancing ratepayer interests through its participation in each

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<sup>586</sup> *Id.* at 5 TR 3381–82.

organization.”<sup>587</sup> Presumably, the Commission believed that this information would provide the “substantial evidence,” as described above, required by state law to justify continued recovery of DTE’s discretionary memberships.<sup>588</sup>

Consumers has not provided “substantial evidence” to prove that recovery for its corporate memberships is reasonable. In its initial Application, the Company did not provide a list of organizations for which it was seeking recovery, did not specify the requested amount for all corporate memberships or any particular corporate membership, and failed to provide any concrete benefits associated with any membership. In subsequent discovery and rebuttal testimony, the Company offered a list of “benefits” that are neither tangible nor specific enough to warrant recovery from ratepayers. As a result, the Company has failed to provide “substantial evidence” to justify recovery of its discretionary corporate memberships in this case.

In discovery, the Company offered perfunctory benefit descriptions that did not include sufficient tangible, specific benefits to ratepayers. The Company stated that EEI provides “utility benchmarking, best practices, and research,” in addition to a Mutual Assistance Coordination function, which is further discussed below.<sup>589</sup> The Company also stated that the Michigan Electric and Gas Association (MEGA) “work[s] with the Michigan legislature, federal and state regulatory agencies, and the entire Michigan energy industry to ensure safe, reliable, and affordable electricity utility service,” without offering specific, tangible examples of how these activities result in benefits for ratepayers.<sup>590</sup> The Company also says that the Keystone Policy Center provides “utility benchmarking, best practices, and research with a focus on environmental issues and renewable

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<sup>587</sup> *In re DTE Electric Co.*, MPSC Case No. U-21297, Order (Dec. 1, 2023) [hereinafter U-21297 Order], at 221.

<sup>588</sup> MCL § 24.285; Const 1963, art 6, § 28, cl 2.

<sup>589</sup> Ex. UCC-70 at 1.

<sup>590</sup> *Id.*

energy standards,” and that Chambers of Commerce memberships “help Consumers Energy promote continued economic growth, connect with business customers, and support community engagement”<sup>591</sup>—neither of which are tangible, identifiable benefits to ratepayers. These descriptions are so broad and non-specific that they provide an insufficient basis for the Commission to evaluate whether ratepayers receive tangible value from these memberships.

The Company’s rebuttal testimony did not provide any further concrete benefits to ratepayers sufficient to justify recovery from customers. While the Company provided four “broad” categories of benefits that memberships supposedly provide, followed by seven examples of how EEI membership benefits customers, these “benefits” do not offer tangible benefits to *ratepayers*.<sup>592</sup> With the sole exception of a specific program offered by Edison Electric Institute (EEI) on “Mutual Assistance Coordination,”<sup>593</sup> the Company offers only broad, generic descriptions of membership benefits with no explanation of how dues are allocated among different activities or services offered by the organizations.

The Company’s first claimed benefit of corporate memberships, “benchmarking,” lacks sufficient detail and description to justify recovery. The Company describes this benefit as “help[ing] the Company understand how its performance and practices compare to its peers.”<sup>594</sup> But the Company provides no specific examples of how this would impact or benefit ratepayers. The Company provides no information, for example, on how ‘benchmarking’ information is superior to publicly available information, nor how these benchmarking studies affect a specific operation, decision, or policy that impacts and benefits ratepayers. In addition to not providing a qualitative, specific description, the Company confirmed that it has taken no efforts to calculate

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<sup>591</sup> *Id.*

<sup>592</sup> Foster Revised Rebuttal Testimony at 5 TR 3371–74.

<sup>593</sup> *Id.* at 5 TR 3373.

<sup>594</sup> *Id.* at 5 TR 3371.

the monetary value of benchmarking to ratepayers in dollars.<sup>595</sup> It offers only a generic description of a service provided to the Company by the membership organizations.

The Company's second proffered benefit, "facilitate collaboration," is even less concrete. Consumers describes this benefit as "bring[ing] stakeholders together to share best practices related to energy efficiency, clean energy transition, and grid planning."<sup>596</sup> The Company fails to provide specific information, however, on the mode of collaboration, the results that benefit ratepayers, or any concrete quantification of what amount of dues goes towards these activities broadly.<sup>597</sup> The Company confirmed that it has taken no efforts to calculate the monetary value of facilitating collaboration to ratepayers in dollars.<sup>598</sup> Without specifics about what collaboration occurs and what results it produces for ratepayers, there is no basis to conclude that it justifies ratepayer recovery.

The Company once again offers no concrete examples of its third benefit, "research," or how "research" directly helps ratepayers. Consumers describes this benefit as "provid[ing] access to research that the Company would otherwise have to perform on its own, and lead[ing] to access to information at a lower cost than if each member organization performed the research on their own."<sup>599</sup> Foster's rebuttal testimony provides no details on how research specifically benefits ratepayers, rather than shareholders, nor does it identify specific research reports or analyses obtained through membership. Additionally, as Witness Foster affirmed in cross-examination, the Company has again not quantified the monetary value of the benefit to ratepayers in dollars.<sup>600</sup>

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<sup>595</sup> Foster Cross Examination at 5 TR 3428.

<sup>596</sup> Foster Revised Rebuttal Testimony at 5 TR 3371.

<sup>597</sup> *Id.*

<sup>598</sup> Foster Cross Examination at 5 TR 3429.

<sup>599</sup> Foster Revised Rebuttal Testimony at 5 TR 3371.

<sup>600</sup> Foster Cross Examination at 5 TR 3429.

The Company's fourth listed benefit, "networking," suffers from the same flaws as the previously offered "benefits." The Company describes "networking" as "help[ing] build relationships with peers that improve[] the flow of communication between people and companies leading to a greater awareness of industry trends, emerging technologies, emerging issues, and resources."<sup>601</sup> Similar to the previously described benefits, the Company, in rebuttal testimony, still failed to provide specific examples of how "networking" benefits ratepayers concretely. The Company did not offer information on who participates in these networking activities, what tangible products or results they offer, and how ratepayers specifically benefit. The Company also has not calculated the monetary benefits to ratepayers.<sup>602</sup>

Specific to the Edison Electric Institute, in rebuttal testimony, the Company also provides a list of benefits, but the list provides almost no specific examples or quantified value to ratepayers. Here, the company listed seven "[s]pecific examples of how EEI participation benefits customers:"<sup>603</sup> mutual assistance coordination, cybersecurity and technology best practices, customer support, supplier diversity and networking, regulatory preparedness, transportation electrification, and industry expertise and innovation.<sup>604</sup> But the descriptions of these benefits were fairly generic and did not include sufficient details.<sup>605</sup> During cross-examination, the Company confirmed that it has not calculated in dollars the monetary value of any benefit to ratepayers.<sup>606</sup>

The first benefit, "Mutual Assistance Coordination," is the closest the Company comes to identifying a benefit to ratepayers, though the Company has still failed to provide sufficient information on how these funds directly benefit ratepayers. Mutual assistance coordination is

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<sup>601</sup> Foster Revised Rebuttal Testimony at 5 TR 3372.

<sup>602</sup> Foster Cross Examination at 5 TR 3429–30.

<sup>603</sup> Foster Revised Rebuttal Testimony at 5 TR 3373.

<sup>604</sup> *Id.* at 5 TR 3373–74.

<sup>605</sup> *Id.*

<sup>606</sup> Foster Cross Examination at 5 TR 3430.

described as a “nationwide mutual assistance network that enables the Company to quickly mobilize resources for storm restoration” that is “unique in the utility industry and has proven essential during major outage events.”<sup>607</sup> Here, the Company has at a minimum identified a service to ratepayers that is unique to being a member of EEI. However, this program is a \$15,000 *additional* voluntary fee on top of the broader EEI membership fees.<sup>608</sup> In this case, the Company is requesting \$770,775 from ratepayers for EEI in total.<sup>609</sup> And as evidenced in Workpaper WP-PDD-18, the Company considers “EEI Restoration, Operations, Crisis” to be a separate line item.<sup>610</sup> To the extent that the Commission views “mutual assistance coordination” as a tangible benefit to customers, the Commission could disallow recovery for EEI membership fees but allow recovery for the mutual assistance coordination program.

The other six listed benefits of EEI fail to identify specific, tangible benefits to ratepayers.<sup>611</sup> The Company mentions access to leading security initiatives and threat intelligence, but it does not disclose how this information is implemented to protect customer data. The Company notes “facilitating the exchange of best practices in customer service,”<sup>612</sup> but it does not offer specific examples of what its collaboration is, who participates in it, or how it is concretely used to create an improved customer experience. The Company states that “EEI supports the

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<sup>607</sup> Foster Revised Rebuttal Testimony at 5 TR 3373.

<sup>608</sup> See UCC-73 at 5 (stating under “Separately Funded Activities” that “[s]ome EEI member companies choose to pay for separate activities and programs that fall outside of the core EEI budget . . . . In addition, most EEI member companies contribute to the Restoration, Operations, and Crisis Management Program (Restore Power), which focuses on improvements to industry-wide responses to major outages; continuity of industry and business operations; and EEI’s all hazards (storms, wildfires, cyber, etc.) support and coordination of the industry during times of crisis. Contributions to Restore Power depend on the number of customers a member company has, with a maximum contribution of \$15,000 annually.”).

<sup>609</sup> Ex. UCC-68 at 1.

<sup>610</sup> Ex. UCC-203 at 1, lines 6–8.

<sup>611</sup> Foster Revised Rebuttal Testimony at 5 TR 3373–74.

<sup>612</sup> *Id.*

identification of diverse suppliers and promotes best practices in inclusive procurement”<sup>613</sup>—a commendable effort—but does not provide examples of how the Company has utilized the information that EEI identifies. The Company highlights federal regulatory development information provided by EEI,<sup>614</sup> but it does not disclose how that information informs the Company’s planning for DER integration, nor does it assure ratepayers that EEI does not include an unbiased analysis of regulatory efforts. Similarly, the Company says that EEI facilitates the sharing of best practices from electrification programs, supporting a clean energy transition, and EEI convenes experts on topics such as battery operations, decarbonization, and more.<sup>615</sup> Again, the Company does not provide any specific examples of how these best practices are shared, how the Company has utilized unique information provided by EEI, or how ratepayers benefit. Even more importantly, however, the Company has not attempted to quantify any of these benefits to ratepayers in monetary value—despite asking for recovery of membership fees from ratepayers.<sup>616</sup> Without quantification, the Commission cannot evaluate whether the benefits ratepayers receive justify the costs they are being asked to bear.

In this case, the Company failed to describe the benefits to ratepayers in its initial Application. Even after discovery, rebuttal, and cross-examination of the Company’s principal witness regarding corporate membership fees,<sup>617</sup> the Company has neither quantified the monetary benefits to ratepayers<sup>618</sup> nor provide concrete examples of benefits to ratepayers outside of mutual assistance coordination. If the Company cannot point to specific projects or initiatives that have

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<sup>613</sup> *Id.*

<sup>614</sup> *Id.*

<sup>615</sup> *Id.*

<sup>616</sup> Foster Cross Examination at 5 TR 3430–31.

<sup>617</sup> *Id.* at 5 TR 3378 (confirming that Foster is “the right witness” to ask about “the company’s request to charge a portion of these memberships to ratepayers”).

<sup>618</sup> *Id.* at 5 TR 3428–31.

benefited ratepayers, it will have failed to meet its burden to provide substantial evidence in its case, and the Commission cannot authorize recovery. Accordingly, UCC requests that the Commission reject the Company's request to recover its corporate membership expenses. The Commission should require Consumers to provide detailed descriptions of each of their corporate memberships in future rate applications, which the Commission has already ordered another utility, DTE Electric, to do in Case No. U-20836. The Company should explain (1) the concrete benefits customers receive through each organization and (2) how membership fees are allocated toward specific programs that support ratepayer interests.<sup>619</sup>

**3. Allowing Consumers to Recover Membership Dues for Organizations that Engage in Advocacy That Undermines Ratepayers' Interests is Not "Just and Reasonable" and Violates Ratepayers' Constitutional Rights.**

The Commission should not allow Consumers to recover membership dues that fund political advocacy that undermines the interests of ratepayers. The Company has agreed that "lobbying activity included in corporate membership dues should not be recovered from customers."<sup>620</sup> And, the Company has asserted that the \$830,705 in total of membership dues included for recovery in this case, which amounts to approximately 54% of total membership due costs,<sup>621</sup> "ensures no expenses associated with public advocacy, lobbying, or solely benefiting shareholders are included for recovery in the rate case filing."<sup>622</sup> However, the Company has failed to provide sufficient evidence to prove that it has not included any expenses associated with advocacy, lobbying, or activities that undermine the interests of ratepayers in its request for recovery.

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<sup>619</sup> See Cira-Reyes Direct Testimony at 3 TR 2369–70.

<sup>620</sup> Foster Revised Rebuttal Testimony at 5 TR 3372.

<sup>621</sup> *Id.* at 5 TR 3374.

<sup>622</sup> *Id.*

For example, Consumers seeks \$770,775 in recovery from EEI membership fees despite EEI’s well-documented and widespread engagement in a multitude of activities dedicated to shaping policy outcomes that prioritize the financial interests of member companies over ratepayer needs.<sup>623</sup> EEI’s advocacy efforts are often at odds with goals of affordability, sustainability, and environmental justice—which are critical to the clean energy transition and in the interest of ratepayers.<sup>624</sup> Including EEI membership dues in its recovery request amounts to Consumers forcing customers to subsidize these advocacy efforts. This is not only not “just and reasonable,” it also conflicts with First Amendment protections against compelled speech.

**a. Forcing Ratepayers to Subsidize Anti-Ratepayer Advocacy Violates First Amendment Principles Regarding Compelled Speech.**

Controlling case law clearly establishes that forcing individuals to subsidize advocacy with which they may disagree is unconstitutional. The First Amendment to the U.S. Constitution, which was made applicable to states by the Fourteenth Amendment, bars government officials from enacting policies “abridging the freedom of speech.”<sup>625</sup> The U.S. Supreme Court has held consistently that freedom of speech “includes both the right to speak freely and the right to refrain from speaking at all.”<sup>626</sup> Political advocacy and association have long been affirmed as fundamental forms of protected speech;<sup>627</sup> thus, the Court has also repeatedly held that “[t]he right to eschew association for expressive purposes is likewise protected.”<sup>628</sup> Finally, given that the First

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<sup>623</sup> See Cira-Reyes Direct Testimony at 3 TR 2359–65.

<sup>624</sup> *Id.* at 3 TR 2361–65.

<sup>625</sup> U.S. CONST. amend. I; *Gitlow v. People of N.Y.*, 268 U.S. 652, 666 (1925) (holding that the Fourteenth Amendment incorporates the First Amendment’s freedom of speech protections against state governments).

<sup>626</sup> *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

<sup>627</sup> See, e.g., *Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley, Cal.*, 454 U.S. 290, 294 (1981) (“[T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process.”).

<sup>628</sup> *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 892 (2018) (citing *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984)).

Amendment protects one’s right to spend money on political advocacy,<sup>629</sup> the Court has also made clear that “compelled subsidization” of advocacy on matters of public concern “seriously impinges on First Amendment rights.”<sup>630</sup>

In applying this principle, the Court has consistently prohibited organizations from using membership dues to fund advocacy when the organizations collect payments from dissenting individuals and those individuals have no way not to support the advocacy. For instance, in *Abood v. Detroit Board of Education*, the Court unanimously held that when public employees are required by state law to pay agency fees to a labor union, the First Amendment generally bars the union from spending those fees on political advocacy.<sup>631</sup> Specifically, insofar as unions may wish to use agency fees “toward the advancement of [ ] ideological causes,” the Court stipulated that those expenditures may only be financed “by employees who do not object to advancing those ideas and who are not coerced into doing so against their will.”<sup>632</sup> The Court recently expanded the scope of this rule in *Janus v. AFSCME Council 31*. There, the majority held that public employees may not even be compelled to subsidize activities like collective bargaining that are inherently political, even if not considered a traditional form of political advocacy.<sup>633</sup> Of course, protections against compelled subsidization are not just applicable in the context of public employment.<sup>634</sup> In each of these cases, the dispositive issue was not whether the organizations

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<sup>629</sup> See *Buckley v. Valeo*, 424 U.S. 1, 19 (1976) (holding that the First Amendment protects political spending “because virtually every means of communicating ideas in today’s mass society requires the expenditure of money”).

<sup>630</sup> *Janus*, 585 U.S. at 894.

<sup>631</sup> *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 234–36 (1977).

<sup>632</sup> *Id.*

<sup>633</sup> *Janus*, 585 U.S. at 920, 929–30.

<sup>634</sup> *Keller v. State Bar of Cal.*, 496 U.S. 1, 14 (1990) (holding that in states where attorneys are required to pay bar association dues in order to practice lawfully, the First Amendment strictly limits bar associations from using those dues to “fund activities of an ideological nature which fall outside those areas of activity. The difficult question, of course, is to define the latter class of activities.”).

engaged in advocacy; the organization each had its own constitutional right to do so. Rather, the cases turned on persons' inability to object to their money being spent on advocacy with which they disagreed when they had no way to exit the organization or withhold their funds from it.

Consumers' status as a monopoly provider of essential services, being the exclusive electric utility service provider within its service territory, puts its customers in a similar position, with no ability to object to how their money is spent. Customers are effectively compelled to make payments to an entity (Consumers) that uses those payments to fund advocacy with which they may disagree. Customers have no alternative provider and cannot "shop around" for a utility that does not engage in advocacy contrary to their values. Consumers' customers have no recourse to avoid subsidizing advocacy with which they disagree; they cannot reasonably seek electric service from a competitor or live without electricity. Company Witness Foster affirmed that the Company does not provide ratepayers an "opt-out" option of discretionary corporate membership dues that they do not wish to fund through their payments to the Company.<sup>635</sup> They must pay Consumers or face disconnection of essential services. Consumers' customers are just as powerless to object to how their money is spent as the employees in *Abood* and *Janus* or the attorneys in *Keller*.

There is ample evidence that EEI engages in activities that are contrary to ratepayer interests. EEI has an extensive history of advocacy against policies that promote solar energy, including campaigns against rooftop solar and net-metering policies and funding disinformation campaigns targeting lawmakers who support solar access.<sup>636</sup> EEI has opposed EPA regulations aimed at lowering power plant emissions and toxic pollutant discharges,<sup>637</sup> and has advocated for

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<sup>635</sup> Foster Cross Examination at 5 TR 3431.

<sup>636</sup> Cira-Reyes Direct Testimony at 3 TR 2361–62 (citing Ex. UCC-79, Gabe Elsner, *Utilities' Anti-Solar Campaign and Misinformation Debunked*, ENERGY & POL'Y INST. (Mar. 19, 2015); Ex. UCC-80, Joby Warrick, *Utilities Wage Campaign Against Rooftop Solar*, WASH. POST (Mar. 7, 2015), at 1).

<sup>637</sup> Cira-Reyes Direct Testimony at 2362–63 (citing Ex. UCC-83, David Pomerantz, *EEI Used Anti-Clean Energy Campaigns as Role Models in Political Boot Camp for Utility Execs*, ENERGY & POL'Y INST.

bailouts to keep coal plants operating.<sup>638</sup> It has advocated against legislation targeting corruption in utility regulation,<sup>639</sup> and against regulations requiring corporate emissions disclosures.<sup>640</sup> EEI furthers its policy goals through legal advocacy by intervening in or filing amicus briefs in support of utility lawsuits that challenge environmental protection laws and utility commission orders.<sup>641</sup> EEI has engaged in extensive efforts related to both political and policy advocacy and lobbying. Many of these positions are likely opposed by many of Consumers' customers—including, for instance, UCC Witness Cira-Reyes, who testified about the benefits of community solar.<sup>642</sup> To protect customers' freedom of speech and association rights, the Commission must not allow Consumers to recover dues for EEI or any other organization that engages in similar advocacy on matters of ratepayer concern.

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(Aug. 27, 2020) at 1–4; Ex. UCC-84, Emily L. Williams et al., *The American Electric Utility Industry's Role in Promoting Climate Denial, Doubt, and Delay*, 2022 ENV'T RSCH. LETTERS 17(2022), at 10; Ex. UCC-85, Kim Riley, *EEI Takes Targeted Strike at EPA's Power Plant Emissions Rule*, DAILY ENERGY INSIDER (May 22, 2024), at 1).

<sup>638</sup> Cira-Reyes Direct Testimony at 3 TR 2363 (citing Ex. UCC-86, Matt Kasper, *Coal and Utility Interests Ask for, Receive, Bailouts to Help Failing Power Plants*, ENERGY & POL'Y INST. (Oct. 2, 2017) at 4; Ex. UCC-87, Gavin Bade, *FERC Seeks Fast Track on DOE Baseload Compensation Proposal*, UTIL. DIVE (Oct. 2, 2017) at 2–3).

<sup>639</sup> Cira-Reyes Direct Testimony at 3 TR 2363–64 (citing Ex. UCC-88, Dave Anderson, *Ohio's Big Utilities Fight Repeal of Scandal-Tainted Bill Riders that Cost Customers Billions of Dollars*, ENERGY & POL'Y INST (Mar. 24, 2025) at 2–4).

<sup>640</sup> Cira-Reyes Direct Testimony at 3 TR 2364 (citing Ex. UCC-89, Edison Electric Institute & American Gas Association, Comment on The Enhancement and Standardization of Climate-Related Disclosure for Investors, SEC Release Nos. 33-11042 and 34-94478, File No. S7-10-22 (June 17, 2022), at 5; Ex. UCC-90, *Scope 3 Inventory Guidance*, EPA, at 1).

<sup>641</sup> Cira-Reyes Direct Testimony at 3 TR 2364–65. *See generally, e.g.*, Final Brief of Amicus Curiae Edison Electric Institute in Support of Petitioner, *Xcel Energy Servs. Inc. v. FERC*, 41 F.4th 548 (D.C. Cir. 2022) (advocating to reverse a FERC decision barring a vertically integrated grid operator from implementing rules to favor its own generators and thereby suppress market competition); Motion of Edison Electric Institute, International Brotherhood of Electrical Workers, the Chamber of Commerce of the United States of America, and Us Telecom - The Broadband Association for Leave to File Brief as Amici Curiae in Support of Defendants-Appellants, *N. Plains Res. Council v. U.S. Army Corps of Eng'rs*, 2021 WL 7368336 (9th Cir. Aug. 11, 2021) (seeking to argue for reversal of a lower court's ruling enjoining utility companies from discharging dredged or fill material into waterways in violation of federal law).

<sup>642</sup> Cira-Reyes Direct Testimony at 3 TR 2343–45.

**b. The Company Acknowledges That Lobbying Expenses Should Not Be Recovered but Has Not Provided Sufficient Evidence to Support Its Claimed Request for Recovery.**

While Witness Foster, in rebuttal testimony, agreed that recovery should not include expenses that go towards lobbying,<sup>643</sup> harmful political advocacy goes well beyond lobbying. In rebuttal testimony, Witness Foster testified that “[s]eeking partial recovery of the membership dues ensures no expenses associated with public advocacy, lobbying, or solely benefiting shareholders are included for recovery in the rate case filing.”<sup>644</sup> By listing these as three separate categories, the Company implicitly acknowledges that each requires separate analysis and exclusion. However, the Company has not provided sufficient or substantial evidence to support the assertion that no amount of its dues is being used for activities that may be contrary to ratepayers’ interests.

In determining the percentage of EEI membership fees disallowed from recovery, the Company has not provided sufficient transparency or clarity that no part of its fees is going towards lobbying expenses. To calculate the amount of EEI’s dues that are recovered, the Company in Workpaper WP-PDD-18 first allocated EEI expenses into three categories: EEI, EEI Industry Issues, and EEI Restoration, Operations, and Crisis.<sup>645</sup> The Company highlights percentages—16 percent, 27 percent, and 0 percent, respectively—which are disallowed due to lobbying, and further reduces the requested recovery by 33 percent.<sup>646</sup> The 16 and 27 percent figures, according to Company Witness Foster in cross examination, are percentages that are provided by EEI.<sup>647</sup> And yet, the Company does not ask for any additional documentation from EEI to support these

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<sup>643</sup> Foster Revised Rebuttal Testimony at 5 TR 3372 (“The Company agrees that lobbying activity included in corporate membership dues should not be recovered from customers.”).

<sup>644</sup> *Id.* at 5 TR 3374.

<sup>645</sup> Ex. UCC-203 at 1, lines 7–9.

<sup>646</sup> *Id.*

<sup>647</sup> Foster Cross Examination at 5 TR 3393.

percentages.<sup>648</sup> Nor does it have any third-party contractor review any financial information.<sup>649</sup> Nor does it solicit any documentation explaining the breakdown of dues and fees into cost categories.<sup>650</sup> The Company's principal witness on this issue testified affirmatively to the fact that, to his knowledge, the Company does not make an independent judgment on the portion of each organization's dues in lobbying costs that should not be passed on to ratepayers.<sup>651</sup>

Furthermore, the Company has not verified that a consistent definition of "lobbying" is used across organizations from which it receives a disallowance percentage.<sup>652</sup> Consumers' webpage on corporate political engagement points to parent company CMS Energy's webpage on the same topic,<sup>653</sup> which directs readers to 26 U.S.C. § 162(e)(1) in identifying "dollars used for lobbying a legislative body" related to dues.<sup>654</sup> 26 U.S.C. § 162(e)(1) disallows deductions for amounts paid in connection with "(A) influencing legislation," "(B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office," "(C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums," or "(D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official."<sup>655</sup> To understand what percentage of membership fees are used for lobbying activities, Consumers should identify and disclose how this definition aligns with or differs from the disallowed percentages provided by the membership organizations. Then, this information should

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<sup>648</sup> *Id.* at 5 TR 3395.

<sup>649</sup> *Id.*

<sup>650</sup> *Id.* at 3395–96.

<sup>651</sup> *Id.* at 3396.

<sup>652</sup> *Id.* at 3394; Ex. UCC-203, Consumers Energy Company Workpaper WP-PPD-18, at 1, column f (showing that the Company receives disallowance percentages from the Detroit Regional Chamber of Commerce, the Michigan Chamber of Commerce, EEI, and EEI Industry Issues).

<sup>653</sup> Ex. UCC-204, *Corporate Political Engagement*, CONSUMERS ENERGY, at 1.

<sup>654</sup> Ex. UCC-205, *Corporate Political Engagement*, CMS ENERGY, at 3.

<sup>655</sup> 26 U.S.C. § 162(e)(1).

be scrutinized with respect not only to lobbying but also to activities that constitute political advocacy or provide benefits to shareholders rather than ratepayers.<sup>656</sup>

Additionally, the Company’s workpaper includes information that calls into question the accuracy of the Company’s methodology. For example, Workpaper WP-PDD-18 lists total spending of \$118,508 for “EEI Industry Issues.”<sup>657</sup> This amount is exactly 10% of the company’s base EEI dues of \$1,185,085.<sup>658</sup> In cross-examination, Witness Foster was unable to provide an explanation of the difference between the different activities of EEI represented by these two line items.<sup>659</sup> EEI’s April 2025 public disclosures might offer a clue, however, stating that “[m]any EEI member companies choose to make an additional annual contribution of 10 percent of their dues to an emerging issues fund.”<sup>660</sup> “[T]hese funds are used to pay for political consultants, litigation expenses, and engagement in state legislation and policy matters” in addition to responding to “issues that were not expected and could not be planned for during the normal budgeting process.”<sup>661</sup> EEI reported that, in 2024, 29.9 percent of these funds were used on lobbying activities, and in 2025, EEI estimated the amount would be “about the same.”<sup>662</sup> And yet, Consumers disallowed only 27 percent of their “industry issues” line item.<sup>663</sup> Transparency from Consumers on what this line item is, where the 27 percent disallowance specifically came from, and if it is the same as EEI’s publicly disclosed “Emerging Issues” fund is necessary to understand

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<sup>656</sup> See also *Janus*, 585 U.S. at 897, 920, 929–30 (forbidding collection of fees that go beyond direct lobbying or political advocacy).

<sup>657</sup> Ex. UCC-203 at 1, line 7, column f.

<sup>658</sup> *Id.*

<sup>659</sup> Foster Cross Examination at 5 TR 3389.

<sup>660</sup> Ex. UCC-73 at 6.

<sup>661</sup> *Id.*

<sup>662</sup> *Id.*

<sup>663</sup> Ex. UCC-203, Consumers Energy Company Workpaper WP-PPD-18, at 1, line 7, column f.

if Consumers has truly “ensure[d]” that no portion of its requested fees go to public advocacy, lobbying, or expenses solely benefiting shareholders.<sup>664</sup>

While Consumers takes the important step to disallow an additional 33 percent of fees for recovery, which, as Company Witness Foster asserts, is per the Commission Order in MPSC Case No. U-15245,<sup>665</sup> this is not enough to ensure that ratepayers’ constitutional rights are protected. In *U-15245*, the Commission adopted a 33 percent disallowance for certain trade association dues based on testimony listing just three general categories of benefits, one of which was explicitly acknowledged to exclusively benefit shareholders.<sup>666</sup> The Commission’s 33 percent figure was not the product of rigorous cost-benefit analysis or detailed examination of what membership organizations actually do. Rather, it was a rough approximation based on limited information nearly two decades ago. Even if the Commission historically disallowed 33 percent for lobbying in that previous case, that does not mean the remaining 67 percent of every requested recovery there since does *not* go towards lobbying, political advocacy, or benefit shareholders over ratepayers. The utility still bears the burden of providing substantial evidence that the remaining costs actually benefit ratepayers.<sup>667</sup> And, the utility should provide specific, transparent accounting that no requested funds for recovery can be or are being used for unconstitutional political advocacy or lobbying activities. This is particularly salient in light of EEI’s breadth and depth of

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<sup>664</sup> Foster Revised Rebuttal Testimony at 5 TR 3374.

<sup>665</sup> *Id.* at 5 TR 3372–73.

<sup>666</sup> *In re Consumers Energy Co.*, MPSC Case No. U-15245, MPSC Order (June 10, 2008), at 33 (“Consumers accepted the adjustments proposed by the Staff”); *In re Consumers Energy Co.*, MPSC Case No. U-15245, Midkiff-Powell Direct Testimony at 11 TR 1774, (“Staff is already providing an opportunity for the shareholders to earn a return on their investment. Therefore, Staff is disallowing 1/3 of these dues because 1/3 of the benefits are provided to the shareholder.”).

<sup>667</sup> *Supra* Section G; MCL § 24.285; Const 1963, art 6, § 28, cl 2; *see also Dowerk v. Charter Twp. of Oxford*, 233 Mich. App. 62, 72 (1998) (defining “substantial evidence” as “evidence that a reasonable person would accept as sufficient to support a conclusion”).

activities that are contrary to ratepayer interests, as described above.<sup>668</sup> The 33 percent disallowance should be considered a baseline, or floor, upon which the Company needs to justify any requested recovery of corporate memberships for entities that are contrary to ratepayer interests.

As described in cross-examination and rebuttal testimony, the demonstrable harms of EEI's advocacy and documented track record of anti-ratepayer advocacy supports disallowance of recovery of all EEI dues from ratepayers, but for the potential exception of the previously discussed mutual assistance coordination fee. There is ample persuasive authority from around the country to support the disallowance of organizations that engage in political advocacy. At least six state commissions have disallowed or limited recovery of similar membership costs, recognizing that ratepayers should not be forced to subsidize political advocacy.<sup>669</sup> The Missouri PSC, for example, established a standard that would allow recovery for organizations that engage in political advocacy as long as the company could "include not only a direct quantifiable benefit to the ratepayer, but also a method for allocating the expenses between the shareholders and the ratepayers once the benefits have been quantified."<sup>670</sup> In forty years, no portion of EEI dues have been recovered under this rule.<sup>671</sup> In 2021, the Kentucky Public Service Commission disallowed the recovery of any portion of Kentucky Utilities' EEI membership dues, after the utility failed to meet its burden to identify how much of its EEI dues were spent on "regulatory advocacy and

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<sup>668</sup> *Supra* Section G.3.a.

<sup>669</sup> Cira-Reyes Direct Testimony at 3 TR 2366–68.

<sup>670</sup> Ex. UCC-92, *In re Evergy Missouri West, Inc.*, Missouri PSC Case No. ER-2024-0189, Giacone Direct Testimony (June 27, 2024) (excerpted), at 4 (quoting *In re Kansas City Power & Light Co.*, Missouri PSC Case Nos. EO-85-185 & EO-85-224, Order (Apr. 23, 1986)).

<sup>671</sup> Cira-Reyes Direct Testimony at 3 TR 2366; Ex. UCC-92, *In re Evergy Missouri West, Inc.*, Missouri PSC Case No. ER-2024-0189, Giacone Direct Testimony (June 27, 2024) (excerpted), at 4.

public relations.”<sup>672</sup> Oregon has excluded trade association dues from recovery.<sup>673</sup> The Arizona Corporation Commission disallowed recovery of any of Arizona Public Service Company’s EEI dues, concluding it was neither just nor reasonable.<sup>674</sup> The California Public Utilities Commission in 2019 prevented more than 75% of EEI dues from being passed onto Southern California Edison’s (SCE) ratepayers, stating that SCE failed to present evidence supporting a determination of EEI’s beneficial services cost to ratepayers.<sup>675</sup> And Colorado has disallowed trade association dues and lobbying fees from being paid by customers.<sup>676</sup> This Commission should join the growing consensus among utility regulators that allowing recovery of organizational dues that fund advocacy or do not clearly and tangibly benefit ratepayers is unjust, unreasonable, and unconstitutional. Customers have a constitutional right not to have the money they are paying used to promote policies that undermine their interests.<sup>677</sup>

The constitutional harm inflicted by compelled subsidization provides an independent and compelling basis for disallowance. This Commission has both the authority and the responsibility to protect ratepayers from being forced to fund political advocacy contrary to their interests. By disallowing recovery of EEI membership dues, and establishing clear standards against such recovery going forward, the Commission can ensure that Consumers’ customers are not made instruments of advocacy they may oppose. Shareholders, who benefit from EEI’s lobbying and

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<sup>672</sup> Cira-Reyes Direct Testimony at 3 TR 2367 (quoting Ex. UCC-93, *In re Kentucky Utilities Co.*, Kentucky PSC Case No. 2020-00349, Order (June 30, 2021) (excerpted), at 3).

<sup>673</sup> Cira-Reyes Direct Testimony at 3 TR 2367; Ex. UCC-94, *In re Avista Utilities*, Oregon PUC Docket No. UG 461, Order No. 23-384 (Oct. 26, 2023) (excerpted), at 3.

<sup>674</sup> Cira-Reyes Direct Testimony at 3 TR 2368; Ex. UCC-95, *In re Arizona Public Service Co.*, ACC Docket No. E-0135A-22-0144, Order (Mar. 5, 2024) (excerpted), at 6.

<sup>675</sup> Cira-Reyes Direct Testimony at 3 TR 2368; Ex. UCC-96, Christian Roselund, *California Prevents Utility from Paying EEI Dues with Ratepayer Funds*, PV MAGAZINE (May 21, 2019) at 3).

<sup>676</sup> Cira-Reyes Direct Testimony at 3 TR 2368; Ex. UCC-97, Mark Jaffe, *Xcel Ordered to Remove Investor Relations and Executive Salaries from Costs Passed on to Colorado Consumers*, COLO. SUN (Nov. 5, 2024) at 2.

<sup>677</sup> See Cira-Reyes Direct Testimony at 3 TR 2365–66.

voluntarily invest in the Company, remain free to fund these activities. But captive ratepayers, who have no choice in their utility provider, should not be compelled to subsidize private speech on contested matters of public concern.

For the above reasons, UCC respectfully requests that the Commission:

- (1) Disallow the entire \$830,705 in corporate membership dues sought by Consumers Energy. At a minimum, the Commission should disallow all costs associated with EEI membership, or limit EEI recovery to a maximum of \$15,000 for the documented mutual assistance program. The Company's Application fails to identify substantial evidence for tangible ratepayer benefits from these memberships that would justify recovery from ratepayers. Moreover, the Company has not made a sufficient effort, either in its initial Application or in the course of this proceeding, to ensure that membership fees are not subsidizing political advocacy efforts that are contrary to ratepayer interests.
- (2) Require itemized membership disclosures in future rate cases showing tangible customer benefits and clear allocation of fees between activities benefiting ratepayers and any political advocacy, lobbying, or services that primarily benefit shareholders. This requirement should be consistent with the disclosure standards established for DTE Electric in the orders in Case Nos. U-20836, U-21297, and U-21534, ensuring equal treatment of similarly-situated utilities.
- (3) Establish a concrete standard barring recovery where trade associations dedicate significant resources to political advocacy, particularly where that advocacy is contrary to customer interests. This standard should apply consistently across all utilities under

the Commission's jurisdiction, protecting all Michigan ratepayers from compelled subsidization of advocacy that serves shareholder, rather than customer, interests.

These measures are necessary to ensure that ratepayers pay for services that benefit them, not shareholders, to prevent compelled subsidization of political advocacy, and to promote consistency and transparency. Not only has the Company failed to offer specific benefits of these memberships to ratepayers, but the Company's lack of transparency, specificity, and substantiation demonstrates it has not satisfied its burden to prove that recovery of these costs from ratepayers is just and reasonable.

[The next section starts at the top of the next page]

#### IV. CONCLUSION AND PRAYER FOR RELIEF

To address the concerns articulated above, Urban Core Collective respectfully request that the Commission:

(1) With respect to affordability:

- a. Sufficiently consider the evidence provided by UCC of an affordability crisis when making a rate increase determination, as is required by Michigan law;
- b. Limit any rate increase approval to the maximum extent possible, to avoid further exacerbating the existing affordability crisis;
- c. Address Consumers' discontinuation of the Percentage of Income Payment Plan (PIPP) pilot program in the instant case, and order Consumers to adopt a long-term PIPP plan;
- d. Approve Consumers Energy's requested amendments to the Low-Income Assistance (LIA) Credit;
- e. Order Consumers to conduct a comprehensive affordability analysis incorporating the Commission's definition of energy affordability every time the Company requests a rate increase; and
- f. Approve only the lowest possible ROE.

(2) With respect to reliability:

- a. Require the Company to (1) proactively notify all customers of their right to receive outage credits and (2) provide customers with an explanation of how outage credits are calculated and applied; and
- b. Reassess the amount paid as outage credits so that they more accurately reflect the costs incurred by customers.

- (3) With respect to shutoffs, require the Company to cease all shutoffs until it (a) can determine why BIPOC customers are experiencing increased shutoff rates and (b) implements measures to prevent racially-disparate shutoffs.
- (4) With respect to environmental justice:
- a. Require the Company to perform further analysis to remedy deficiencies, such as insufficient analysis of similarly-situated communities;
  - b. Require Consumers to provide a more detailed plan for the ten-year Vulnerable Communities Resiliency Plan (VCRP);
  - c. Require further Company support for the deployment of Distributed Energy Resources (DERs) in EJ communities, and scrutinize closely the Company's community solar efforts in other cases such as MPSC Case No. U-21972;
  - d. Order Consumers to adopt minimum extreme heat policies, including: (1) prohibiting disconnections of residential service when either: (a) the forecasted temperature will reach 90°F or above in the service area, or (b) the NWS issues a heat advisory, excessive heat watch, or excessive heat warning for the service area; (2) restricting disconnections for at least twenty-four hours before and after extreme heat events, and extending restrictions to weekends and holidays; and (3) disallowing disconnections during the summer months of June, July, August, and September. The Commission should also consider policies which (1) address affordability issues simultaneously and (2) require Consumers to make reasonable efforts to reconnect individuals who have been disconnected for nonpayment;

- e. Order an interim moratorium on disconnections during the hot summer months of June, July, August, and September, should the Commission choose to wait until further action is taken in MPSC Case No. U-20140; and
- f. Require Consumers to update its public-facing maps and data to : (1) include a clear key explaining all acronyms and data categories; (2) add intuitive and navigable map controls; and (3) implement functionality that allows side-by-side comparison of reliability performance across circuits, ensuring compliance with the Commission’s Order in Case No. U-21389.

(5) With respect to the Investment Recovery Mechanism:

- a. Proceed cautiously before approving the proposed IRM extension in this case;
- b. Mandate a comprehensive equity evaluation in Consumers’ reconciliation process that demonstrates the actual benefits of investments in EJ communities; and
- c. Order quarterly reporting on equity outcomes that directly links the Company’s investments in EJ communities to the needs of those communities.

(6) With respect to customer and community engagement:

- a. Order the Company to report publicly on a quarterly basis on the benefits delivered to all customers, particularly LMI customers, and the costs incurred to secure those benefits as a part of the LMI Customer Support Enhancement Project;
- b. Require reporting on how Analytics and Outreach efforts directly benefit and engage with customers and how information received is analyzed and addressed; and

- c. Require that the Company proactively reach out to EJ communities and offer accessible opportunities for dialogue on affordability and reliability issues, including through collaboration with environmental justice organizations.

(7) With respect to corporate memberships:

- a. Disallow recovery of the entire \$830,705 in corporate membership dues sought by Consumers Energy.
- b. In the alternative and at a minimum, disallow all costs associated with EEI membership, or limit EEI recovery to a maximum of \$15,000 for the documented mutual assistance program;
- c. Require itemized membership disclosures in future rate cases demonstrating tangible customer benefits and clear allocation of fees between activities benefiting ratepayers and any political advocacy, lobbying, or services that primarily benefit shareholders; and
- d. Establish a concrete standard barring recovery where trade associations dedicate significant resources to political advocacy, particularly where that advocacy is contrary to customer interests.

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Date: December 5, 2025

ABRAMS ENVIRONMENTAL LAW CLINIC  
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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.

Case No. U-21870

ALJ Jonathan F. Thoits

**PROOF OF SERVICE**

I, Mark N. Templeton, certify that an electronic copy of the Initial Brief of Urban Core Collective was served on the following on December 5, 2025.

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

Date: December 5, 2025

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