



December 8, 2025

Ms. Lisa Felice
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48909

Via E-File

RE: MPSC Case No. U-21870

Dear Ms. Felice:

Attached please find the enclosed documents for filing:

- Petition for Rehearing by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan; and
- Proof of Service.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me.

Sincerely,

Holly L. Hillyer
holly@tropospherelegal.com

CC: 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 the generation
and distribution of electricity and for other
relief.

Case No. U-21870

PETITION FOR REHEARING

**BY MICHIGAN ENVIRONMENTAL COUNCIL,
NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND
CITIZENS UTILITY BOARD OF MICHIGAN**

December 8, 2025

I. INTRODUCTION

The Michigan Environmental Council (MEC), Natural Resources Defense Council (NRDC), Sierra Club, and Citizens Utility Board of Michigan (CUB) (collectively, MSNC), under Rule 437 of the Rules of Practice and Procedure of the Michigan Public Service Commission (MPSC or Commission), Michigan Administrative Code R 792.10437, and MCL 460.352 and MCL 8.6, files this Petition for Rehearing (Petition) relating to the Commission's November 6, 2025, Order granting the Commission Staff's September 18, 2025, application for leave to appeal a decision of the Administrative Law Judge (ALJ) denying Staff's motion to amend the scheduling memorandum for this case. Specifically, this Petition sets forth one claim of error and one claim of unintended consequences resulting from the Commission's decision to grant the unrequested relief of striking evidence. MSNC respectfully requests that the Commission grant this Petition and issue a corrected order to address this issue, as more fully explained below.

II. STANDARD FOR REHEARING

MPSC Rule 437(1) states:

A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon.¹

¹ Mich Admin Code, R 792.10437(1).

III. ARGUMENT

A. The order erred in granting relief that was unsupported by the record.

The order concerns Staff’s appeal of the ALJ’s denial of its motion for leave to amend the scheduling memo in this case. The scheduling memo, issued July 8, 2025, contained an instruction that parties filing testimony on return on equity (ROE) “shall . . . set forth a) the average expected long-term return on equity for the broader stock market, and b) the average ROE authorized for regulated utilities in the United States for the last five years.”² On August 20, 2025, Staff filed an appeal asking that the instruction be removed, which the Attorney General supported.³ On September 4, 2025, the ALJ denied Staff’s appeal but indicated that he would issue an amended scheduling memorandum to address certain concerns.⁴ On September 5, 2025, the ALJ issued an Amended Scheduling Memorandum clarifying that a party need only make a good faith attempt to locate the requested information.⁵ On September 18, 2025, Staff filed an application for leave to appeal the ALJ’s ruling, which Consumers Energy (Consumers or the Company) supported and MNSC opposed. On November 6, 2025, the Commission granted Staff’s application for leave to appeal “along with the requested relief therein” and stated: “The amended return on equity provision set forth in the September 5, 2025 amended scheduling memo is stricken, *along with any evidence filed in response thereto and since admitted into the record.*”⁶ Striking evidence was not part of the relief requested in Staff’s application for leave, which only asked the Commission to

² Order, pp 2-3 (quoting Scheduling Memo, July 8, 2025).

³ *Id.* at 3.

⁴ Ruling, September 4, 2025, p 7.

⁵ Amended Scheduling Memorandum, September 5, 2025, p 2.

⁶ Order, p 19 (emphasis added).

“strike the provision of the scheduling memorandum that unlawfully compels substantive prefiled testimony.”⁷

The Commission erred in striking evidence because its decision to do so was unsupported by the record. Assuming the Commission has powers analogous to the power of Michigan trial courts to “grant relief to a prevailing party, even if the party has not demanded that relief in the pleadings,”⁸ the Commission did not necessarily err in granting relief that was not requested. “However, the relief granted must be supported by the evidence.”⁹ The relief granted was not supported by the record in this case. The Commission did not identify the evidence to be stricken or evaluate its admissibility. The record before the Commission contained no information whatsoever about what evidence the parties may have filed in response to the stricken provision, let alone sufficient information to support a decision to strike such evidence. The Commission also identified no legal authority supporting its decision.

B. Compliance with the order will result in unintended consequences, including the deprivation of due process and an unclear record upon which to adjudicate this case.

Because neither Staff’s motion to amend the scheduling memorandum nor its application for leave to appeal contained any request to strike evidence, no party received notice and an opportunity to be heard on the Commission’s decision to strike its evidence, thereby depriving them of due process. Some parties may have filed evidence in response to the stricken provision

⁷ Staff Application for Leave, p 29.

⁸ *Pare v City of Detroit*, No. 199026, 1998 Mich. App. LEXIS 2086, at *13 n.3 (Ct. App. Aug. 18, 1998) (citing *Allstate Ins Co v Hayes*, 442 Mich 56, 67-68 (1993); *Michigan Bell Telephone Co v C & C Excavating Co*, 87 Mich App 758, 766-767 (1979); and MCR 2.605(F)).

⁹ *Id.* (citing *Michigan Bell*, 87 Mich App at 767; *Tomei v Bloom Associates, Inc.*, 75 Mich App 661 (1977); and *Livingston v Krown Chemical Mfg, Inc.*, 394 Mich 144 (1975)).

but wish for it to remain in the record. For example, CUB willingly presented evidence addressing the stricken provision that CUB wishes to remain in the record – specifically, witness Matthew Bandyk’s testimony that the average authorized ROE for 2024 was 9.7% and the expected return for the U.S. stock market is 9.02%, and Mr. Bandyk’s sponsored Exhibit CUB-10.¹⁰ Had the Staff filed a motion to strike Mr. Bandyk’s evidence, CUB would have had the opportunity to file a written response and oppose the motion at a hearing before the ALJ. As a result of the Commission’s order striking evidence, CUB never had notice that its evidence might be stricken, let alone an opportunity to argue for its inclusion in the record.

It is also unclear what evidence the Commission considers to be “filed in response” to the stricken provision, so it is unclear what evidence has been stricken and what remains permissibly in the record. As noted above, the Commission did not identify the stricken evidence. While some witnesses, including Mr. Bandyk, indicated when they were addressing the stricken provision, others may not have done so. Still other parties may have submitted evidence that appears to be responsive to the stricken provision but which the party would have submitted anyway. For example, the Attorney General and Walmart have filed exhibits in previous rate cases listing historical authorized ROEs for regulated utilities, which may be responsive to the stricken provision but almost certainly were not motivated by the ALJ’s instruction. Presumably, the Commission’s order does not extend to such evidence, but its boundaries are unclear.

Similarly, even if one can determine where evidence “filed in response” to the stricken provision begins, it may be difficult to tell where it ends. For example, the Company filed evidence expressly addressing the stricken provision in the form of testimony and exhibits by witness Ann Bulkey setting forth her analyses of the average long-term ROE for the stock market and the

¹⁰ Direct Testimony of Matthew Bandyk, 6 Tr 3944.

average authorized ROE for regulated utilities. Ms. Bulkley’s testimony goes on to rebut testimony of CUB witness Bandyk, Attorney General witness Coppola, Staff witness Megginson, and ABATE witness Walters regarding their testimony on the expected return for the stock market and previously authorized ROEs.¹¹ But, without knowing what portions of the direct testimony of witnesses Bandyk, Coppola, Megginson, and Walters the Commission may consider “filed in response” to the stricken provision, it is impossible to discern what portions of Ms. Bulkley’s rebuttal are stricken. Ms. Bulkley’s rebuttal to Mr. Bandyk on previously authorized ROEs, for example, is virtually identical to testimony the Company has filed in previous rate cases addressing Mr. Bandyk’s opinion that ROEs are generally set too high. Presumably, the Commission’s order does not extend to this part of her rebuttal testimony, but again its boundaries are unclear.

Finally, in addition to the Commission’s order potentially being over-inclusive, striking evidence that parties do not wish to have stricken or that may appear to have been filed in response to the stricken provision but was not, it may also be under-inclusive. When the Commission issued its order on November 6, the parties were in the middle of the third day of cross examination, meaning that some parties’ testimony had already been bound into the record and their exhibits admitted, while other parties had yet to finish their evidentiary presentation. The order strikes evidence “filed in response thereto and since admitted into the record” as of the date the Commission issued it. It does not address the admissibility of subsequently presented evidence. While the Attorney General had already bound in the testimony and exhibits of witness Coppola on November 4, 2025, several parties bound in testimony and moved for the admission of their exhibits on November 10, 2025, including CUB. No party objected to the binding in of any party’s testimony or admission of any exhibits, including evidence that may have been in response to the

¹¹ See Rebuttal Testimony of Ann E. Bulkley, 4 Tr 2800-2816.

stricken provision. Without clarification, it appears that some parties' evidence was stricken while similar evidence from other parties remains in the record.

IV. RELIEF REQUESTED

MNSC respectfully requests that the Commission remedy the above issues by amending its November 6, 2025, order to eliminate the phrase "along with any evidence filed in response thereto and since admitted into the record" from the sentence striking the amended ROE provision from the September 5, 2025, scheduling memorandum. As no party has requested that any evidence be stricken and no party objected to the admission of any other party's evidence containing information responsive to the stricken provision, there is no reason to find that any party has been prejudiced by the inclusion of such evidence.

V. CONCLUSION

For the reasons stated herein, MNSC respectfully requests that the Commission grant its petition for rehearing and amend the November 6, 2025, order.

Respectfully submitted,

Troposphere Legal
Counsel for MNSC

Date: December 8, 2025

By: _____

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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 the generation and distribution of electricity and for other relief.

Case No. U-21870

PROOF OF SERVICE

On the date below, an electronic copy of **Petition for Rehearing by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan** was served on the following:

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

Troposphere Legal
Counsel for MNSC

Date: December 8, 2025

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