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December 23, 2025

**VIA ELECTRONIC CASE FILING**

Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, Michigan 48917

**Re: Case No. U-21870 – 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.**

Dear Executive Secretary:

Enclosed for filing please find the **Association of Businesses Advocating Tariff Equity's Reply Brief** and **Proof of Service** in the above-referenced proceeding.

Sincerely,

**CLARK HILL PLC**

Stephen A. Campbell

SAC/lkd

cc: Parties of Record

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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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

ALJ Jonathan F. Thoits

**REPLY BRIEF OF THE  
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by its attorneys, CLARK HILL PLC, files its Reply Brief in this proceeding initiated by Consumers Energy Company (“Consumers” or the “Company”) before the Michigan Public Service Commission (“Commission”) in accordance with the schedule established by the presiding Administrative Law Judge (“ALJ”).

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## **I. INTRODUCTION**

As set out in greater detail below, certain parties to this case presented numerous cost recovery and allocation proposals which were inadequately supported and would not align cost recovery with its causation. To ensure just and reasonable rates equal to serving the cost of Consumers' customer classes the Commission should reject these proposals and instead adopt the recommendations set out below.

## **II. ARGUMENT**

### **A. Test Year – (Consumers Initial Br at 6-7; ABATE Initial Br at 2-10.)**

Consumers claimed the record does not support any determination that the Company did not sufficiently support its projected costs and objected to using known and measurable changes as an alternative. (Consumers Initial Br at 5.) Despite this claim, as set forth across the record, numerous Company projections are insufficiently supported. (See e.g. ABATE Initial Br at 10-42, 58-70; Staff Initial Br at 6-68.) Further, the “known and measurable changes” approach is one with which the Commission and Consumers are entirely familiar.<sup>1</sup> Consumers' witness Heidi Meyers testified to this approach in Consumers' last rate case. (Case No. U-21585, 4 Tr 427.) Its claims that there is no basis for considering its projections lacking, and it is unfamiliar with a “known and measurable changes” approach, are therefore meritless.<sup>2</sup> As such the Commission should disregard the Company's objection and, where Consumers failed to adequately demonstrate costs are certain, reasonable, and prudent, establish revenue requirements using historic costs.

### **B. Rate Base - (Consumers Initial Br at 435-46; ABATE Initial Br at 10-15.)**

Regarding its proposed capital investments, the Company stated that “line clearing alone is not sufficient,” that “increased capital investments are delivering reliability benefits,” and its

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<sup>1</sup> See *In re Consumers Energy Co*, 338 Mich App 239, 244 (2021); *In the Matter of the Application of Consumers Energy Co*, order of the Public Service Commission, entered November 21, 2006 (Case No. U-14547).

<sup>2</sup> The Company's further claims are addressed in ABATE's Initial Brief. (ABATE Initial Br at 2-10.)

“use of SAIDI excluding MEDs” to support its request “is not ‘cherry-picking’ data.” (Consumers Initial Br at 435-36.) All of these claims were addressed and refuted in ABATE’s Initial Brief. (ABATE Initial Br at 10-15.) As set out in more detail there, Consumers’ outages were overwhelmingly the result of trees or trees outside the ROW and weather and equipment failures account for only a small percentage of total outage minutes. (*Id.*) Further, compared to its peers Consumers’ reliability performance ranks near the bottom despite consistently increasing infrastructure investment, and its focus on SAIDI excluding MEDs distorts a more comprehensive view of its customers’ service quality relative to its infrastructure investments. (*Id.*) The Commission should therefore limit cost recovery for the Company’s distribution capital investments. Despite serving as a source of ever-increasing spending it has produced limited to no customer benefits and is not a reasonable approach to improving service quality.

**1. Distribution capital expenditures.**

**a. HVD capital expenditures.** (Consumers Initial Br at 13-17; ABATE Initial Br at 15-17.)

The Company argued “the Commission has supported increased investment in HVD reliability,” that “there are a number of benefits associated with HVD Substations Reliability sub-program,” and Consumers “can only take these partial substation outages in significant numbers at certain times of the year” which “impacts the Company’s spending.” (Consumers Initial Br at 13-17.) Again, these claims and costs were addressed in ABATE’s Initial Brief. (ABATE Initial Br at 15-17.) As explained there, the Liberty Audit did not find a substantial need or benefit to increased investment in HVD lines or substations given that most SAIDI minutes are related to the LVD system. (*Id.*) Indeed, the Company’s recent outage data shows that almost the entirety of outages over the last three years were the result of a fault that occurred in the LVD System. (*Id.*) Recent outage data therefore does not suggest there is a need to make investments to improve the

reliability of the HVD system, particularly on the scale proposed by the Company. As such, and for the reasons set out in more detail in ABATE’s Initial Brief, the Commission should only approve capital expenditures equivalent to the 2024 levels for the HVD reliability programs.

**b. HVD lines reliability (ROW acquisition).** (Consumers Initial Br at 10-13; ABATE Initial Br at 17.)

The Company argued that despite ABATE’s assertion that “the Company did not provide actual historical data for its ROW acquisitions . . . Exhibit A-130 (MPK-20), page 2, line 9 shows that the Company has incurred millions of dollars in ROW costs in historical years.” (Consumers Initial Br at 10-13.) Again, as explained in ABATE’s Initial Brief, the Company asserted that it *may* incur right of way costs without providing information regarding the most recent actual project being used to support its projections or evidence demonstrating its recent project is representative of other potential projects. (*Id.*) As such, these costs are speculative and the projections are significantly out of line with the most recent historical data. (See ABATE Initial Br at 17; Attorney General Initial Br at 15-21.) The Company therefore failed to satisfy its burden to demonstrate its cost projections are reasonable or that cost recovery is prudent here.

**c. HVD strategic customers new business – 138 kV dedicated customer substation.** (Consumers Initial Br at 36-37; ABATE Initial Br at 18-19.)

The Company argued that the cost of this canceled project should be recovered. (Consumers Initial Br at 36-37.) As explained in ABATE’s Initial Brief, this request for millions of dollars of cost recovery for a project to serve a single customer which was never completed should not be recovered from ratepayers. (ABATE Initial Br at 18-19.) Customers should not backstop the Company’s imprudent contracting practices. For the reasons set forth in more detail in ABATE’s Initial Brief, Consumers should not be permitted to recover these costs from ratepayers and should instead pursue recovery directly from the customer at issue.

**d. LVD asset relocations.** (Consumers Initial Br at 45; ABATE Initial Br at 19-20.)

The Company argued that the Commission should adopt its projected costs based on projected growth in this spending category. (Consumers Initial Br at 45.) As explained in ABATE's Initial Brief, the Company did not adequately support the chasm between its actual costs and its claimed future costs. (ABATE Initial Br at 19-20; see Attorney General Initial Br at 41-47.) As the vast majority and remainder of the projected costs are highly uncertain and inadequately supported, given that they are entirely driven by requests from external stakeholders, and for the reasons set forth in more detail in ABATE's Initial Brief, the Commission should not approve projected capital expenditures for this program above the actual level experienced in 2024.

**e. LVD lines reliability.**

**i. LVD pole replacement.** (Consumers Initial Br at 51; ABATE Initial Br at 23-24.)

The Company asserted that its assumptions underlying its projected pole replacement costs, which were based on multiple layers of age and failure estimates, should be approved. (Consumers Initial Br at 51.) As explained in ABATE's Initial Brief, the Audit found that the observed rate of poor pole conditions requiring management attention was low, did not find high numbers of poles with material condition issues, and did not observe significant numbers of safety issues involving poles. (ABATE Initial Br at 23-24.) For the reasons set out in more detail in ABATE's Initial Brief, the Company's proposal is unreasonable and should be rejected.

**ii. LVD targeted circuit improvement – rejuvenating vintage underground cable.** (Consumers Initial Br at 50; ABATE Initial Br at 25-26.)

The Company argued that Underground Cable Rejuvenation provides safety and reliability benefits as it “targets cable that is starting to deteriorate even if it has not yet failed.” (Consumers Initial Br at 50.) As set out in ABATE's Initial Brief, vintage underground cable rejuvenation

involves replacing cable that is already located underground, meaning any associated safety and reliability benefits of undergrounding have already been realized. (ABATE Initial Br at 25-26.) Furthermore, the Company failed to quantify the benefits of rejuvenating vintage underground cable, despite requesting an additional \$38,080,000 in capital expenditures in the test year above amounts included in the bridge period. (*Id.*) As such, and for the reasons set out in ABATE's Initial Brief, the Commission should reject the Company's request.

**f. LVD lines rehabilitation.** (Consumers Initial Br at 56; ABATE Initial Br at 26-28.)

The Company argued that it "should not be required to list hundreds of individual small projects prior to receiving funding." (Consumers Initial Br at 56.) As explained in ABATE's Initial Brief despite not having identified projects these subprograms account for approximately 37% and 54% of the projected Bridge Period and Test Year LVD Lines Rehabilitation spending, respectively, meaning Consumers has not identified actual work for the majority of its projected LVD Lines Rehabilitation costs. (ABATE Initial Br at 26-28.) As such, given the level of conjecture in Consumers' projections, and for the reasons set out in more detail in ABATE's Initial Brief, cost recovery amounts should be set at the five-year average of expenditures.

**g. LVD resiliency – overhead to underground conversions.** (Consumers Initial Br at 61; ABATE Initial Br at 28-32.)

The Company made numerous claims regarding its BCA and request for cost recovery. (*Id.*) All of these claims were addressed in ABATE's Initial Brief. (*Id.*) For the reasons set out in more detail there the Commission should reject the Company's proposal to greatly expand this program. (See also Attorney General Initial Br at 60-66; MNSC Initial Br at 6-13.)

**h. LVD new business capacity.** (Consumers Initial Br at 65-66; ABATE Initial Br at 32-33.)

Consumers stated a five-year average is not a reasonable projection of test year costs based on recent actual spending in LVD New Business Capacity. (Consumers Initial Br at 65-66.) As explained in ABATE’s Initial Brief, spending in these categories is customer-driven and therefore largely uncertain, recent historic spending must also be considered in context, and new business demand is sensitive to interest rates, broader economic conditions, and policy changes, all of which inject further uncertainty into forward-looking projections. (ABATE Initial Br at 32-33; see also Attorney General Initial Br at 67-69.) As such, and as set out in more detail in ABATE’s Initial Brief, it would be more reasonable and prudent to limit the projected investment in this category to the five-year average actual spend.

**i. LVD transformers.** (Consumers Initial Br at 68-69; ABATE Initial Br at 33-35.)

The Company argued that “new business is resulting in increased rates of transformer needs,” and Consumers places “full year orders upfront to mitigate ongoing supply chain risks.” (Consumers Initial Br at 68-69.) As explained in ABATE’s Initial Brief, Consumers’ projections must be considered in the context of the Company’s historic costs, which are significantly below its projections here. (ABATE Initial Br at 33-35; see also Attorney General Initial Br at 69-73.) Furthermore, its projections are based on an estimated number of transformers needed and inexact and inadequately supported assumptions. (*Id.*) As such, and for the reasons set out in more detail in ABATE’s Initial Brief, the Commission should limit cost recovery to 2024 actual amounts.

**j. Line regulator controller project.** (Consumers Initial Br at 74; ABATE Initial Br at 35-37.)

The Company acknowledged it is “correct that the BCA that the Company provided did not include items such as taxes and ROE” but pointed to “benefits to customers and safety.”

(Consumers Initial Br at 74.) As explained in ABATE’s Initial Brief, whatever purported benefits may be achieved by this program, they do not supplant the Company’s burden to demonstrate its projected costs are reasonable or prudent. (ABATE Initial Br at 35-37.) Furthermore, the Company’s assumptions regarding equipment failure are unreasonable and inadequately supported. (*Id.*) As such, and for the reasons set out in more detail in ABATE’s Initial Brief, the Commission should reduce the Company’s proposed pace for the line regulator controller project to 25% of the proposed installation rate. (*Id.*; see also Attorney General Initial Br at 74-75.)

**2. Generation capital expenditures – Cost recovery for extra work not covered by the LTSA for the Covert, Zeeland, and Jackson plants should not be recovered in rates at this time.** (Consumers Initial Br at 105-06; ABATE Initial Br at 38-40.)

Regarding the Covert plant, the Company argued that it has “recent actual historical experience [] on which to base its cost projections.” (Consumers Initial Br at 105-06.) As explained in ABATE’s Initial Brief these amounts are highly speculative, may or may not be incurred, and are dramatically out of line with actual historic costs. (ABATE Initial Br at 38-40; see Attorney General Initial Br at 81-85.) Indeed, regarding Consumers’ purported “actual historic experience,” actual costs associated with this item were \$86,688 in 2023 and \$1,339,561 in 2024. (Exhibit AB-3 at 22-59.) As such the Company has not met its burden to demonstrate it is reasonable to increase cost recovery for these speculative, hypothetical, undetermined future costs by dramatic magnitudes and tens of millions of dollars.

Similarly, the Company argued that while “the spending for Zeeland LTSA Extras over the past few years has been [] \$463,000 in 2021, \$522,000 in 2022, \$15.184 million in 2023, and nothing in 2024,” which “appears inconsistent,” its request for non-actual cost recovery of “\$675,000 for the bridge period and the forecasted \$810,000 for the test year” is reasonable. (Consumers Initial Br at 107-08.) As explained in ABATE’s Initial Brief, these amounts are

speculative projections associated with issues that *might* be discovered without any assurance they will be incurred and are significantly out of line with historical actuals. (ABATE Initial Br at 40-41.) For the reasons set out in ABATE’s Initial Brief, there is not an adequate basis on which to approve the Company’s requested cost recovery.

The Company also argued that “spending for Jackson LTSA Extras over the past few years has been as follows: \$4.192 million in 2021, \$3.920 million in 2022, \$497,000 in 2023, and \$330,000 in 2024” and the “updated bridge period forecast is \$3.472 million,” while the forecasted test year amount is \$315,000.” (Consumers Initial Br at 109-10.) As set out in ABATE’s Initial Brief, these forecasted amounts are speculative projections and significantly out of line with historical actuals. (ABATE Initial Br at 41-42.) As such, the Company failed to adequately support its projections and there is no clear historical trend justifying Consumers’ proposal.

**C. Capital Structure and Rate of Return – A reasonable ROE for the Company is 9.50%. (Consumers Initial Br at 191–227; ABATE Initial Br at 43-60.)**

**1. The Commission should adopt a balanced capital structure.**

The Commission made clear on numerous occasions that utilities should strive for a balanced 50/50 capital structure unless exceptional circumstances require otherwise. See, e.g., *In re Consumers Energy Co*, order of the Public Service Commission (Case No. U-21585), entered March 21, 2025, p 232. Indeed, the Commission approved a balanced equity ratio for the Company in its last two fully contested rate cases, Case Nos. U-21389 and U-21585. Despite the Commission’s consistent position on capital structures, the Company requested a 50.75% equity ratio here. (Consumers Initial Br at 191–227.)

Although the Commission agreed that there is “some degree of flexibility” in calculating the appropriate capital structure, Consumers has failed to demonstrate that its financial condition is at risk, has somehow deteriorated, or that its cash flow to debt coverage ratio requires a higher

equity percentage. (See Attorney General Initial Br at 119–20.) In fact, the Company’s financial position is relatively stronger and less risky than the proxy group used to assess the Company’s cost of equity. (ABATE Initial Br at 47.) The Company’s equity ratio therefore should be required to adhere to the Commission’s preference of a balanced capital structure.

**2. The Company’s low risk profile does not warrant a 10.25% ROE.**

The Company asserted that it has a risk profile greater than that of the proxy group which, supports an ROE toward the higher end of the reasonable range of ROEs. (Consumers Initial Br at 234.) This is false. For the reasons set forth in ABATE’s Initial Brief Consumers continues to be a relatively safe and stable investment, and conditions warrant a *decrease* in its authorized ROE of 9.90%. (ABATE Initial Br at 47.) Indeed, while its ROE has decreased the Company has consistently over-earned and generated revenue sufficiencies, rather than struggle to generate capital. (Dauphinais 6 Tr 3642.) Moreover, contrary to its suggestion that it is operating in a difficult regulatory environment, Michigan’s regulatory environment is generally considered favorable to utilities such as Consumers. (Consumers Initial Br at 235; Attorney General Initial Br at 120.) This includes recent clean energy requirements that *ensure* the utility is fairly compensated and receives a return on all clean or renewable energy investments. See, eg, MCL 460.1047(1). The factors the Company cites as favorable to utilities are clearly available in Michigan and utilized by Consumers. (Consumers Initial Br at 235.)

The Company’s consistent revenue sufficiencies the past several years demonstrate a higher equity ratio and 10.25% ROE are unjustified. The Commission should therefore implement a balanced capital structure and a reasonable ROE of 9.50% to ensure the Company is fairly compensated while maintaining rates that are competitive, just, and reasonable.

### 3. The Company's commits several errors in its quantitative analyses.

The Company contends that ABATE's quantitative analyses support the Company's 10.25% ROE "when properly adjusted." (Consumers Initial Br at 251.) On the contrary, it is the Company's quantitative analyses that need to be corrected. Indeed, the Company's ROE is an excessive outlier amongst the proposal in this case *because of* the errors in its analyses. The Commission should therefore reject the Company's position and adopt a ROE of 9.50%.

The Company's analyses are wrong and need to be corrected for several reasons. *First*, the Company's constant growth DCF fails to consider that its proxy growth rates are much higher than the long-term projected GDP growth rate of 4.09%. (ABATE Initial Br at 51-52, 56.) It is axiomatic that a utility's growth rate cannot exceed the growth rate of the economy in which it provides services in perpetuity, which is the time period assumed by the DCF model. (*Id.*) *Second*, the Company relies on its highly inflated ECAPM analysis which skews its ROE range upward despite the ECAPM being routinely discarded by public utility commissions across the country as unreliable and inaccurate. (Consumers Initial Br at 252-53; ABATE Initial Br at 57.) *Third*, the Company fails to incorporate a WLS regression to correct its risk premium analysis. When properly applied, a WLS regression analysis produces an ROE of 9.85%. (*Id.* at 53-54.) *Finally*, the Company misstates ABATE's sustainable growth rate DCF analysis by claiming it is "unsound" and "not appropriate." (Consumers Initial Br at 247.) On the contrary, the sustainable growth rate DCF represents the basic economic premise that reinvested dollars in infrastructure encourages and accelerates company growth. In the utility context, these reinvested earnings enhance the Company's earnings base or rate base. (ABATE Initial Br at 51.) This phenomenon is not theoretical or abstract, but instead observed in practice using the Company's current market-to-book ratio and *Value Line's* three to five-year projections of earnings, dividends, earned returns on book equity, and stock issuances. (*Id.*) The Commission should therefore adopt a 9.50% ROE.

## **D. Adjusted Operating Income**

### **1. Distribution O&M expense – electric operations – Non-forestry reliability.** (Consumers Initial Br at 310-11; ABATE Initial Br at 60-63.)

The Company argued that ABATE’s recommended cost recovery disallowances were based on a misunderstanding of the “Other Adjustments” column in Exhibit A-128 (MPK-18). (Consumers Initial Br at 310-11.) These claims are addressed in ABATE’s Initial Brief. In short, the Company’s projected O&M expense for this subprogram drastically exceeds the historical 5-year average and historical actuals for 2024 without specifically describing the basis for these deviations, instead only making vague statements about how projected test year amounts were determined. (ABATE Initial Br at 60-63.) As such, and for the reasons set forth in ABATE’s Initial Brief, the Company has failed to demonstrate cost recovery is reasonable or prudent.

### **2. Distribution O&M expense – electric operations – O&M and metering without service restoration.** (Consumers Initial Br at 317; ABATE Initial Br at 63-67.)

The Company pointed to “Exhibit A-222 (MPK-32) for detailed unit information for these O&M sub-programs, further illustrating the increasing workload in these sub-programs that will be supported by the increased expenses.” (Consumers Initial Br at 317.) As explained in ABATE’s Initial Brief, the Company’s request constitutes a drastic unsupported departure from its actual historic and projected costs. (ABATE Initial Br at 63-67.) For the reasons set forth there the Commission should reduce projected O&M expense for these subprograms by \$18.118 million.

### **3. Distribution O&M expense – electric operations – Field operations - training.** (Consumers Initial Br at 319; ABATE Initial Br at 67-69.)

The Company argued that it “will need to increase training in the test year for the increased field operations workforce.” (Consumers Initial Br at 319.) Despite this claim, as set out in ABATE’s Initial Brief, the Company’s request constitutes a significant increase from its actual historic costs based on blanket assertions and unclear assumptions regarding the new number of

hires that will actually require training during the projected test year, and whether that projection is reasonable and likely to be accurate. (ABATE Initial Br at 67-69.) Further, the Company acknowledged that challenges in obtaining the necessary crews can occur, resulting in projects not being completed as planned. For these reasons, as well as those set out in more detail in ABATE's Initial Brief, the Company has failed to meet its burden here.

**4. Line clearing O&M expense.** (Consumers Initial Br at 326; ABATE Initial Br at 69-70.)

The Company argued that if it “completes its HVD workplan at lower-than-authorized cost, it will reallocate, ‘as it has historically done,’ any net decrease in HVD test year clearing costs to the LVD system.” (Consumers Initial Br at 326.) As this claim neither negates ABATE's concern nor proposes a reasonable basis for approving cost recovery the Commission should adopt ABATE's proposed disallowance. As set out in ABATE's Initial Brief, Consumers' projected O&M for this subprogram represents an unsupported increase. (ABATE Initial Br at 69-70.) Further, it is neither reasonable nor prudent to approve cost recovery for an amount the Company itself acknowledged may be excessive on the premise that Consumers can simply, without additional regulatory review or approval, spend it on something else. For these reasons, as well as those set forth in more detail in ABATE's Initial Brief, the Company has not met its burden to demonstrate a revenue increase for this program is warranted.

**E. Cost of Service, Rate Design, and Tariffs –**

**1. Rate LED.** (MNSC Initial Br at 96-122; ABATE Initial Br at 73-79; Consumers Initial Br at 414-19; Solar Technologies Initial Br at 2-9.)

**a. Rate LED comports with its purpose to offer competitive energy prices.**

The Commission approved Rate LED in its December 2, 2021 Order in Case No. U-21160, where it found that “approval of the new rate will assist in attracting large, unique, and energy-intensive facilities with incremental load that are seeking competitive energy prices,” and that

“Rate LED complies with Michigan law, and is reasonable and in the public interest.” MNSC’s claims regarding “excessive and unreasonable discounts” are meritless and should be considered in this context. (MNSC Initial Br at 97-101.)

While MNSC compared Rate LED to Rate GPD, which it described as Rate LED’s “closest counterpart,” the Commission recognized in approving Rate LED that Consumers proposed “the ratemaking treatment for Rate LED be similar to that applied to the LTILRR” rate, not Rate GPD, that “the costs of serving participating customers will be directly assigned to those customers,” and that approval of Rate LED “will not result in an increase in the cost of service for any customer” as the Company “will only offer Rate LED if it expects the marginal contract revenues will exceed the expected marginal costs of serving the incremental load.”<sup>3</sup> In other words, MNSC’s comparisons to Rate GPD rest on a faulty foundation and conflict with the Commissions’ purpose in approving this rate in the first place. The Commission approved Rate LED with the recognition that the discounts provided by an economic development rate would be beneficial and would not raise the rates of other customers. It did so over the same objections MNSC raised here, namely the claims that other customer classes may be allocated costs associated with these customers (even though the Citizens Utility Board acknowledged that the proposed Rate LED rate design “on paper, may not shift costs to other customer classes”) and that it is theoretically possible that new Rate LED customers would have located in Consumers’ service territory without Rate LED. (See Case No. U-21160, Filing No. 11 (December 17, 2021).) Years later, while irrelevantly arguing that Rate LED production charges and transmission charges are lower than Rate GPD, and that Rate LED customers are eligible for interruptible status, MNSC did not identify a single instance in

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<sup>3</sup> *In the Matter of the Application of Consumers Energy Co*, order of the Public Service Commission, entered December 2, 2021 (Case No. U-21160).

which any of these claimed circumstances had any impact on other customers, or that the “discounts” offered by Rate LED have increased customer rates. (MNSC Initial Br at 96-101.)

Indeed, MNSC’s claims regarding production charges attempt to distract from the fact that Rate LED is cost of service based and does not result in customer subsidies. (*Id.*) The incremental production cost to serve a new large load addition is the incremental cost of new capacity (the MISO CONE value referenced by MNSC), the Locational Marginal Price (“LMP”) for energy, and MISO market settlement charges associated with purchasing energy at the LMP. (See Connolly 3 Tr 159-61, 169-72; Dauphinais 6 Tr 3651-57, 3666-67; Consumers Energy Company Rate Book for Electric Service, Sheet D-78.10-78.50.) Rate LED recovers these costs and, as a result, fully covers the additional production cost that Consumers incurs to serve these customers. As such, with respect to production costs, the rate is consistent with cost of service and does not cause other customers to subsidize large load additions. With regard to production costs, specifically, Consumers obtains the incremental capacity to serve the large load addition once, just before the beginning of service; i.e., it does not each year obtain new incremental capacity. As such, contrary to MNSC’s claims regarding changes in Consumers’ capacity costs over time, it is entirely appropriate and consistent with cost of service for the CONE price to remain fixed over a Rate LED contract term. Furthermore, it is entirely appropriate and consistent with cost of service principles for the fixed production cost charge to be 50% of the CONE charge, or zero, if the large load addition is respectively 50% interruptible or 100% interruptible. To the extent the large load addition is interruptible, it eliminates Consumers’ need to acquire capacity at the CONE price (or any price) to serve the large load addition. This does not represent cost shifting, it reflects the Company’s actual cost to serve these customers.

MNSC's framing of Rate LED is therefore inconsistent with its operation and impact on Consumers' costs, as well as its Commission-recognized purpose, and unaccompanied by any demonstration that Rate LED has had a negative impact on other customers. As such its objections to the Rate LED proposals in this proceeding are meritless and should be rejected.

**b. The facilities allowance is responsive to Commission direction.**

After decrying the Commission-approved purpose and operation of Rate LED, without demonstrating it has had any detrimental impact on other customers, MNSC objected to the Company's proposed facilities allowance Rate LED. (MNSC Initial Br at 101-04.) Specifically, it did so by citing to prior Commission decisions in prior cases regarding different proposals.

After noting the Commission previously declined to adopt different proposals based on alternative records, MNSC acknowledged the key distinction here; that in Consumers' most recent rate case the Commission stated that a facilities allowance proposal should "include[] only distribution and system contribution revenues, not power supply revenues, and [be] based on a limited term, similar to DTE Electric's Rate D13." (MNSC Initial Br at 104-04.) That is the proposal the Company made here. Specifically, it essentially proposed offering the same opportunity DTE offers its economic development rate customers, and which Consumers already offers to standard service customers, to Rate LED customers as well.

The Commission previously directed that a Rate LED facilities allowance reflect parity with DTE's economic development rate, in contrast to prior proposals. The Company has made that proposal here and the Commission's prior decisions on different proposals in different proceedings do not provide a basis for rejecting the alternative facilities allowance proposed here.

**c. A facilities allowance will not increase costs for other customers.**

MNSC stated that the "cost of the dedicated infrastructure is typically recovered through the customer's incremental distribution charge, but the facilities allowance would reduce that

charge” before claiming that “to prevent cost shifting to other customers, Consumers must demonstrate that the expected future revenues included in the facilities allowance [] cover both the costs of the dedicated infrastructure and the marginal cost of adding the customer’s load onto the rest of the distribution system.” (MNSC Initial Br at 105-06.) This claim is both speculative and overstates the standard against which the Company’s proposal should be considered.

First, Consumers does not need to *prove* a facilities allowance will not shift any incremental distribution costs to other customers (which it will not). It has the burden to, by a preponderance of evidence, demonstrate its proposal is just and reasonable.<sup>4</sup> This means such evidence as demonstrates a circumstance is more likely than not.<sup>5</sup> Furthermore, evidence that costs will not be shifted due to the facilities allowance is provided by myriad parties across the record in this case.

The Company explicitly explained that “LEDR customers pay for investments made by the Company for incremental distribution facilities required to serve them through a levelized incremental distribution charge” and therefore “LEDR customers are paying the same distribution rates as other customers paying embedded cost rates, in addition to the incremental costs associated with their distribution facilities.” (Connolly 3 Tr 169.) Further, the “LEDR tariff states that this [incremental distribution] charge may be adjusted to contribute to the recovery of the annual revenue requirement associated with investments made by the Company for incremental distribution facilities.” (*Id.* at 170.) In addition, the Company explicitly explained the following:

Part of the development rate includes an incremental distribution charge that is specific to each customer. The incremental distribution charge is based on the cost of the distribution facilities to serve that customer. So to the extent that a facility’s allowance was offered to the customer, we would take -- we would calculate the facility’s allowance and offset the distribution investment amount and recalculate the incremental distribution chart. [(*Id.* at 516.)]

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<sup>4</sup> *In the Matter of the Application of Consumers Energy Co*, order of the Public Service Commission, entered March 21, 2025 (Case No. U-21585), p 5.

<sup>5</sup> *Vance v Frymaster Corp*, 449 Mich 909, n1 (1995).

Additional parties similarly explained that the proposed facilities allowance “within LEDR is designed specifically to protect Consumers’ ability to recover its incremental distribution connection cost from the new LEDR customer” and is “designed to provide Consumers the flexibility to adjust charges to an LEDR customer, if necessary, to align with its incremental distribution cost to connect the LEDR customer to its system.” (Gorman 4 Tr 3173-77.) Moreover, the facilities allowance “amount is set equal to the LEDR net present value of distribution and system contribution revenue margin collected from the LEDR customer over a five-year period” and thus, “if Consumers’ incremental distribution cost of connecting the LEDR customer is equal to or less than the FA, then Consumers will fully recover its incremental distribution cost incurred to connect the LEDR customer via the LEDR distribution and system contribution charges over a five-year period.” (*Id.*)

It’s also important to note “that the expected useful life and depreciation rate of the incremental distribution infrastructure will very likely be much longer than five years, and the LEDR rate term is longer than five years,” meaning “Consumers is expected to fully recover its incremental distribution cost incurred in connecting the LEDR customer via the LEDR distribution and system contribution charge revenue collections.” (*Id.*) Again, however, if “Consumers’ cost of interconnecting the new customer is more than the FA allowance, then Consumers has a right to either increase its distribution charges to the LEDR customer or require the customer to make a [] payment to Consumers for the difference between the FA allowance and Consumers’ actual incremental distribution cost of connecting the LEDR customer.” (*Id.*) Thus, Rate LED and the proposed facilities allowance “ensure the rate fully covers the incremental cost to provide the new or expanded electric service, while also providing a contribution toward Consumers’ embedded costs after the initial five years of service. (Dauphinais 6 Tr 3652-55.)

In response to these explanations of how the facilities allowance and Rate LED operate, MNSC simply asserted the Company hadn't proven there would be no impact on other customers and made various claims which were either baseless or irrelevant. For instance, MNSC's statement that "[t]he notion that Consumers could add a customer with [Rate LED] demand without adding any marginal costs to the distribution system [] is not plausible" is entirely unsupported. (MNSC Initial Br at 108-09.) Further, the issue is not whether there will be marginal costs, but whether Rate LED will recover them from Rate LED customers. As explained above, it will. Further, MNSC's assertion that the Company's own representation that it will adjust Rate LED customers' rates to cover incremental costs is "wishful thinking" is again based on nothing indicating the Company will not operate Rate LED as it is designed, and has Consumers has stated it will. (MNSC Initial Br at 108-09.) MNSC's claim that Consumers will essentially discard and contradict its own representations in this case, as well as Case No. U-21160 in which it explicitly represented to the Commission that "the costs of serving participating customers will be directly assigned to those customers," and it "will only offer Rate LED if it expects the marginal contract revenues will exceed the expected marginal costs of serving the incremental load," meaning approval of Rate LED "will not result in an increase in the cost of service for any customer" is groundless.

Further, MNSC's claim that "an LED customer who terminates service after the halfway point of its rate contract is relieved of responsibility to pay for a portion of the remaining balance of the costs Consumers incurred to connect them" is incorrect. (MNSC Initial Br at 110.) While Consumers witness Connolly stated she wasn't "100% sure" regarding this claim, as she hadn't reviewed this language in detail, MNSC's interpretation of Rate LED is inaccurate. (3 Tr 530-33.) Regarding the relevant Table at Rate Book Sheet 78.10, the percentages in the table apply to total investment costs, *not* remaining balance. In other words, by way of example, a Rate LED customer

60% to 70% through its contract term would have paid 67% of the original investment cost. Thus, the table indicates what the remaining balance is; it does not indicate a Rate LED customer would be absolved from paying that balance. The Company explained this in its application when Rate LED was first approved. (See Case No. U-21160, Filing No. 1 at 7-8.)

The Company's Rate LED facilities allowance proposal has been supported in this proceeding. In contrast, MNSC's objection is nothing more than assumptive conjecture and an inaccurate claim regarding the burden of proof. (MNSC Initial Br at 108-09.) The Commission should therefore reject MNSC's bare assertions regarding various assumptions and possibilities which were refuted by the record and adopt the proposed facilities allowance.

**d. A facilities allowance will attract large loads and address upfront costs.**

MNSC argued that no party has explained why a facilities allowance is necessary or would promote economic development in the Company's service territory. (MNSC Initial Br at 111-12.) This argument does not reflect the record in this case and should be disregarded.

As Consumers explained, since Rate LED's implementation, "potential customers have inquired about the availability of a facilities allowance such as that offered under DTE Electric Company's Rate D13" and its proposal is to "better align with other cost-based large customer rate options in Michigan." (Connolly 3 Tr 159.) Further, "[w]hile it is true that customers have already signed to take service under LEDR, part of the negotiation with these customers was around potential for a future facilities allowance" and their "contracts contained language expressing the Company's intention to file a request to amend this rate to allow LEDR customers to qualify for a CIAC credit," which "customers considered this language and potential for an allowance as part of their decision to locate in the Company's service territory." (*Id.* at 170.) Indeed, "there can be significant costs to interconnect the customer to the utility distribution system" and the proposed change addresses concerns "with respect to there being no facility allowance [] despite one being

available under similar economic development tariffs offered by other utilities.” (Dauphinais 6 Tr 3652-54.) Further, the entire premise of the Commission approving Rate LED was its determination that it “will assist in attracting large, unique, and energy-intensive facilities with incremental load that are seeking competitive energy prices.”

The necessity of a facilities allowance and its impact on economic development has therefore been explained in this proceeding. The facilities allowance is necessary to attract large load customers and would simply produce parity between Consumers’ and DTE’s economic development rates. As such the Commission should reject MNSC’s objection.

**e. The facilities allowance is detailed throughout the record.**

MNSC claimed that “[t]he proposed tariff change provides no specifics to govern the proposed facilities allowance,” and the “entire change is the addition of three words to a sentence in the LED tariff about distribution charges.” (MNSC Initial Br at 111.) This claim does not reflect the record in this case and the Commission should reject MNSC’s objection. As set out above the Company and various intervenors provided detailed explanations of Consumers’ proposed facilities allowance, including how it would operate to recover costs from Rate LED customers. That this mechanism does not require voluminous revisions to the Rate LED tariff itself does not indicate there have been “no specifics to govern the proposed facilities allowance” in this case. In addition to the voluminous direct and rebuttal testimony from numerous parties, the record also contains 61 pages of cross examination on this issue. (3 Tr 175-536.) MNSC’s claimed lack of specifics is therefore inconsistent with the evidence presented in this proceeding. As such the Commission should reject MNSC’s objection and approve the proposed facilities allowance.

**f. MNSC's objection to Rate LED's contract length is unreasonable.**

MNSC argued that “Consumers has not justified why it is necessary to provide such substantial rate discounts for such a long time in order to incent economic development.” (MNSC Initial Br at 120-23.) This claim was inadequately supported, unreasonable, and should be rejected.

As MNSC asserted throughout its Initial Brief, as the proponent of the modification MNSC has the burden of demonstrating its proposal is reasonable and prudent. (MNSC Initial Br at 80-81.) MNSC presented nothing to support its proposal beyond reference to other contract term lengths in other jurisdictions. (Palmer 6 Tr 3935-36.) The Commission approved a minimum 15-year contract term in Case No. U-21160; the fact that other jurisdictions have approved alternative contract lengths is not a basis for modifying that decision here. MNSC's claims that other parties didn't sufficiently disprove its recommendation, and its statement that “in the absence of justification for 15- to 20-year LED discounts” the Commission should “limit Consumers to offering rate LED for a maximum of seven years” are to use its MNSC's phrasing, either a misapprehension or mischaracterization of the burden of proof. (See MNSC Initial Br at 107.)

Furthermore, MNSC's arguments are either unreasonable or mischaracterize the record. The assertion that “it is unclear why the distribution charges could not be scaled to the contract length to prevent” stranded assets is essentially a recommendation that distribution charges be ratcheted up for recovery within a truncated period, which is hardly a reasonable proposal or inducement for an entity to seek service under Rate LED. (MNSC Initial Br at 120-23.) MNSC also claimed that ABATE witness James Dauphinais “never justifies why the term should ever have been 20 years” and “provides no evidence to support his claim” that customers would not have been induced by a shorter term. (MNSC Initial Br at 120-23.) As set out in Mr. Dauphinais' testimony, the maximum allowed term of 20 years was added in response to ABATE testimony in Case No. U-21389 “to protect the rest of Consumers' customers against contract terms that never

lead to Rate LED customers paying a normally allocated share of Consumers' embedded cost of service." (6 Tr 3668-69.) As the testifying expert witness for ABATE, which represents large customers, Mr. Dauphinais explained that Consumers should have sufficient leeway to prudently negotiate a contract term to successfully bring a prospective Rate LED customer to Consumers' service territory. (*Id.*) MNSC's list of alternative contract terms in alternative jurisdictions does not constitute support for its proposal to change the current contract length, particularly when set against this testimony. MNSC's further arguments regarding LED customer charges in relation to Rate GPD and Consumers' production costs also ignore the operation of Rate LED and its function of adjusting distribution charges to cover incremental costs, as discussed in detail above. (MNSC Initial Br at 120-23.) Furthermore, again, MNSC did not provide any evidence that the current available contract terms have had any detrimental impact on other customers.

MNSC's proposal is merely conjecture and does not support revising the available contract terms under Rate LED. As such the Commission should reject MNSC's proposal.

**2. MNSC's AMI meter, distribution cost, and distribution battery cost proposals are inconsistent with the principle of cost causation.**

MNSC made several cost allocation proposals in this proceed which are explicitly framed as shifting costs away from the customers which cause them and instead allocating them to larger customers based on purported but inadequately demonstrated benefits. The customers which use these assets and cause the Company to incur the associated costs are clearly identified in the record. Despite this fact, MNSC has urged the Commission to abandon the straightforward application of cost of service principles and to instead seek out alternative methods of conceptualizing claimed benefits to *other* customers which do not cause these costs as a basis for shifting costs to them. The Commission should not step over the clear and demonstrated manner in which customers cause these costs to instead seek out novel perspectives on conversely allocating costs based on

asserted benefits, especially where such benefits are not sufficiently quantified or supported. As set out in MCL 460.11(1), “the commission shall ensure the establishment of electric rates equal to the cost of providing service to each customer class.” The Commission cannot deviate from this statutory requirement to instead adopt a benefits-of-service based cost allocation approach as proposed by MNSC. As such the Commission should reject the MNSC recommendations below.<sup>6</sup>

- a. **MNSC’s proposed change to AMI meter cost allocation should be rejected.** (MNSC Initial Br at 84-95; Kroger Initial Br at 1-3; Consumers Initial Br at 407-10; ABATE Initial Br at 76-80.)

MNSC advanced the novel claim that allocating these costs in accordance with the manner in which customers cause the Company to incur them is a “depart[ure] from cost-causation principles,” and that allocating them based on purported system benefits reflects cost-causation instead. (MNSC Initial Br at 88-95.) As this proposal is unreasonable and inadequately supported the Commission should reject it here.

As MNSC asserted throughout its Initial Brief, “[p]roponents of modifications to the existing cost allocation method bear the burden to demonstrate that the methods that they respectively advocate ‘better ensure rates are equal to the cost of service’ than the current method.” (MNSC Initial Br at 84-85.) Despite the overwhelming evidence in this case that, as one would expect, the customers who have these meters installed are responsible for the utility’s cost to install them, MNSC claimed that costs should instead be allocated pursuant to its claim that “the benefits of the program are system wide.” (MNSC Initial Br at 88-95.) First, MNSC claimed that MCL 460.11(1)’s clear and specific requirement that the Commission must “ensure the establishment of electric rates equal to the cost of providing service to each customer class” is actually a “general

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<sup>6</sup> See *Consumers Power Co v Michigan Pub Serv Comm’n*, 226 Mich App 12, 26 (1997) (“Recovering one’s costs of business is one thing, but requiring one group of customers to bear the costs of service allocated to other customers is quite another”).

principle that all approved rates reflect to some degree the costs actually caused by the customer who must pay them” and “cost causation principles, requir[e] utility costs to be broadly allocated according to the benefits accrued to each customer class.” (MNSC Initial Br at 90-91.) This is a blatant distortion of straightforward and unequivocal statutory language which requires customers to pay the costs they cause. The statute does not direct the Commission to establish electric rates equal to class “benefits,” nor is it subject to modification based on irrelevant and nonprecedential federal case law or decisions from alternative commissions not controlled by MCL 460.11.<sup>7</sup>

The Commission Orders MNSC cited also do not support its position. First, the Commission’s June 19, 1995 Order in Case No. U-10554 was issued prior to the enactment of MCL 460.11 and the explicit statutory requirement that electric rates equal the cost of providing service. Further, it is contradicted by additional Commission decisions, such as that upheld in *Attorney General*, where the Court of Appeals found that the Commission did not have the authority “to compel customers to pay to support a [] program [] if they have not chosen to receive power from the program,” regardless of potential benefits such as “positive economic and public policy implications.” 269 Mich App at 481. In addition, the Commission’s July 2, 2024 Order in Case No. U-21461 did not allocate DERMS costs to all customers, it found “that the issue of DERMS cost allocation is better addressed in the ongoing Demand Response (DR) Aggregation workgroup.” (MNSC Initial Br at 91.) Neither of the authorities cited by MNSC therefore support its tortured attempt to turn MCL 460.11(1) into a “benefits-of-service” cost allocation mandate.

Further, while MNSC argued that “no party has actually litigated AMI cost allocation, nor has the Commission specifically opined on the issue” the Commission and Court of Appeals have both already determined that costs related to this program are customer-related and should be

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<sup>7</sup> *Attorney General v Pub Serv Comm’n*, 269 Mich App 473, 481 (2005) (explaining the Commission’s “ability to consider a wide variety of factors when setting rates is well-established, but is not unlimited”).

allocated accordingly. (MNSC Initial Br at 94-95.) For instance, in its July 21, 2017 Order in Case No. U-17087 the Commission noted a Court of Appeals determination upholding cost-based rates for customers retaining or replacing an AMI meter with a standard meter. The Commission cited the Court of Appeals' explanation that imposing "charges and expenses based on a utility's costs of operation is well within the ratemaking authority of the PSC."<sup>8</sup> Costs associated with the AMI meter program have been determined to be customer-related; there is no reason why the costs of opting out of this program should be allocated in accordance with the manner in which customers cause them, while the cost of utilizing AMI meters should be allocated based on speculative system-wide benefits to customers which have nothing to do with this program.

MNSC's argument that the Commission should "allocate costs in proportion to AMI's system-wide benefits" "[c]onsistent with cost-causation principles" is therefore incoherent. (MNSC Initial Br at 95; see Kroger Initial Br at 1-3.) Furthermore, even if the Commission were to allocate costs based on benefits (which it should not) the purported benefits put forth in this proceeding do not provide a basis for doing so. As Kroger explained, MNSC relied on achieved and projected benefits "of the entire Smart Grid Program for 2007–2032," rather than those specifically attributable to AMI meters, meaning MNSC's proposed allocators reflect estimated benefits of multiple components of the Smart Grid Program, not just AMI infrastructure, which "is not an appropriate basis for allocating AMI meter costs, particularly given that the methodology itself already departs from traditional cost-of-service principles." (Kroger Initial Br at 1-3.)

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<sup>8</sup> See *In re Consumers Energy Co*, 322 Mich App 480, 491 (2017) (finding "a proper exercise of the PSC's ratemaking authority" where "Consumers proposed opt-out fees, calculated on the basis of cost-of-service principles, that would be imposed only on those customers who chose not to participate in the AMI program," which "fees were designed to cover the additional costs of providing service to those customers"); see also *In the Matter, on the Commission's Own Motion*, order of the Public Service Commission, entered September 11, 2012 (Case No. U-17000), p 5. Furthermore, as Staff noted, in its March 21, 2025 Order in Case No. U-21585 the Commission again addressed certain AMI charges, specifically AMI opt-out charges, and agreed with Staff that the charges should be in alignment with cost of service; i.e., the costs should be allocated in accordance with cost-causation. (See Staff Initial Br at 169.)

Furthermore, MNSC's recommendation is inconsistent with the fact that any benefits are realized within the classes utilizing the meters, meaning larger customer classes with little to no AMI meters do not realize any purported benefits at all. (ABATE Initial Br at 76-80.)

MNSC's proposal would thus not reflect cost causation and would shift costs from residential and commercial customers to primary customers without any engineering or economic evidence that those customers cause these costs, while contravening the clear evidence they do not. Maintaining the customer-based allocation instead ensures fairness and regulatory consistency and aligns cost recovery with its causation.

**b. MNSC's proposed distribution cost allocation should be rejected.**  
(MNSC Initial Br at 74-82; Consumers Initial Br at 405; Staff Initial Br at 156; Kroger Initial Br at 3-5; ABATE Initial Br at 80-83.)

MNSC argued that the Commission should not adopt the Company's proposal to allocate distribution costs to the customers which cause them. (MNSC Initial Br at 74-82.) As MNSC's proposal is inconsistent with cost of service principles the Commission should reject its objection.

As the Company explained, the customers which cause these costs and are served by the assets at issue are lower-voltage customers downstream from these assets. (See Consumers Initial Br at 403-06.) MNSC's claim that this proposal improperly "assumes that users on the upstream side of distribution assets receive no benefit whatsoever from those assets," although "two-way power flows already exist on Consumers' system" is significantly overstated and incorrect. (MNSC Initial Br at 74-82.) The Company confirmed that "the extent of bidirectional power flow occurring between the LVD and HVD system is de minimis" and "only 0.39% of total MWh flowed in the reverse direction between LVD Primary (e.g. Voltage 3) and the HVD (46 kV and 138 kV) system." (McPhail 3 Tr 1753.) Thus, "there is no support for [MNSC's] assumption that upstream commercial and industrial customers are benefiting from bidirectional power flow, even if the concept of who 'benefits' from a general class of investments were a proper basis for

allocating costs (which it is not).” (Consumers Initial Br at 405.)<sup>9</sup> MNSC’s gesture towards vague Company commentary on “two-way flows” which may occur half a decade from now and future “planning and designing” for the Company’s system to be bidirectional sometime in the future have nothing to do with what actually causes the Company to incur these costs (low-voltage customers), nor does it provide a reasonable basis for rejecting the Company’s proposal, which is consistent with the manner in which its system currently operates. (MNSC Initial Br at 78-80.)

MNSC’s claims regarding cost causation therefore mischaracterize the concept. As explained by MNSC, under Consumers’ proposal “if customers downstream of the substation take service at voltage levels 2, 3, and 4, then only those customers would have cost responsibility for the substation – customers taking service at voltage level 1 would no longer have any cost responsibility for the voltage level 1 substation.” (MNSC Initial Br at 76.) In other words, the Company’s proposal is that the customers who are served by the substation should be allocated the associated costs. Thus, while MNSC argued that the “cost consequences” of Consumers’ proposal are unclear, the cost consequences are that customers who receive service from a substation will be allocated the costs, while customers who do not receive service from a substation will not be allocated the costs. (MNSC Initial Br at 74-82.) This is a straightforward application of cost causation and cost of service principles. The cost consequences are that voltage 1 customers will not be allocated costs which they do not cause and which are associated with substations which they do not use and which do not provide them service (or benefits). Thus, contrary to MNSC’s claim, the cost consequences of the Company’s proposal is to align costs with their causation.

Further, as multiple parties pointed out, MNSC’s argument presumes a cost responsibility which is hypothetical and has been repudiated. (*Id.*) For instance, Staff stated that “[c]oncerning

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<sup>9</sup> While MNSC claimed that the underlying “Electric Asset Categorization (‘EAC’) report” is “not in evidence,” it can be found at Exhibit A-111 (MLH-5). (MNSC Initial Br at 75.)

power flows and purported benefits to higher voltage customers, Staff agrees that these supposed power flows have not been quantified and are very minimal and also that costs are not assigned based on benefit” as, instead, “[c]osts are assigned based upon cost causation, which for the distribution system is peak demand by voltage level” and “[b]idirectional power flows have not been shown to affect these peak demands in any significant way and should not be considered when allocating distribution system costs.” (Staff Initial Br at 156; see also Kroger Initial Br at 3-5.) The “Company’s acknowledgment that such flows may occur does not constitute evidence that they do occur, nor does it establish that they occur with meaningful frequency or magnitude,” and MNSC “presents no evidence quantifying the occurrence, scale, or operational significance of these alleged power flows, nor does [it] demonstrate any measurable benefit to higher-voltage customers.” (Kroger Initial Br at 3-5.) Furthermore, even to the very limited extent “bi-directional flows may occur,” Consumers “explicitly recognizes them as challenges requiring mitigation; not as benefits to higher-voltage customers.” (*Id.*)

While MNSC claimed that it “provides evidence that the Company’s premise is not accurate – and will be less accurate in the future,” that “evidence” amounts to general assertions regarding possibilities and future occurrences. (MNSC Initial Br at 74-82.) Further, MNSC’s entire objection is directly contrary to the principle of allocating customers the costs they cause and instead suggests allocating costs based on purported benefits without any demonstration of how those benefits could be quantified to inform cost allocation. (See ABATE Initial Br at 80-83.) MNSC’s objection is therefore unreasonable, inadequately supported, and should be rejected.

- c. **MNSC’s proposed distribution battery cost allocation should be rejected.** (MNSC Initial Br at 84-85; Consumers Initial Br at 403-07; ABATE Initial Br at 83-85.)

MNSC argued that distribution battery costs should not continue to be allocated only to low voltage customers. (MNSC Initial Br at 84-85.) Again, as the proponent of the change to the

existing cost allocation method MNSC bears the burden to demonstrate its change would better ensure rates equal to the cost of service. (*Id.* (internal citation omitted); Davis 4 Tr 2671.) Here, MNSC claimed that “Consumers has not demonstrated that batteries serve only low voltage customers.” (*Id.*) To use MNSC’s parlance, it therefore “either misapprehends or mischaracterizes the burden of proof.” (See MNSC Initial Br at 107.) MNSC failed to meet its burden here.

While MNSC stated that the Company deploys batteries “to support the electric distribution system,” the Company explicitly stated that “the only distribution batteries in service are connected to the LVD system which is why they are allocated to LVD customers.” (See MNSC Initial Br at 84-85.) In response to this explanation of how these assets operate and how their costs are caused by only LVD customers, MNSC provided no supporting engineering or analytical evidence to support its position. (Andrews 6 Tr 3831-33; see Exhibit MEC-18; Davis 4 Tr 2672.) These assets do not serve higher-voltage or transmission level customers. MNSC’s proposal to allocate those customers these costs anyway is based on general and inadequately supported assertions regarding potential system benefits, not on actual data or operational evidence.

MNSC’s proposal is therefore contrary to cost of service principles and would result in inappropriate cost shifting from the customers which cause (and benefit from) these costs to customers which do not. As such the Commission should reject MNSC’s proposal.

### **III. RELIEF REQUESTED**

**WHEREFORE**, ABATE requests the Commission issue an Order adopting ABATE’s positions as outlined in its Direct and Rebuttal Testimony, as well as its Initial and Reply Briefs.

Respectfully submitted,

**CLARK HILL PLC**

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Date: December 23, 2025

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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

ALJ Jonathan F. Thoits

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) ss  
COUNTY OF WAYNE )

Stephen A. Campbell, being first duly sworn, deposes and says that on December 23, 2025, he did cause to be served: the *Association of Businesses Advocating Tariff Equity's Reply Brief*, as well as this *Proof of Service*, in the above docket, via electronic mail to the persons identified on the attached service list.

\_\_\_\_\_  
Stephen A. Campbell

**SERVICE LIST**  
**MPSC Case No. U-21870**

<p><b>Administrative Law Judge</b>  Hon. Jonathan F. Thoits  Administrative Law Judge  Michigan Public Service Commission  7109 W. Saginaw Hwy., 3rd Floor  Lansing, Michigan 48917  Email: <a href="mailto:thoitsj@michigan.gov">thoitsj@michigan.gov</a></p>	<p><b>Counsel for MPSC Staff</b>  Daniel E. Sonneveldt  Amit T. Singh  Nicholas Q. Taylor  Alena M. Clark  Adam M. Cozort  Michael J. Orris  Email: <a href="mailto:sonneveldtd@michigan.gov">sonneveldtd@michigan.gov</a>  <a href="mailto:singha9@michigan.gov">singha9@michigan.gov</a>  <a href="mailto:taylor10@michigan.gov">taylor10@michigan.gov</a>  <a href="mailto:clarka55@michigan.gov">clarka55@michigan.gov</a>  <a href="mailto:cozort1@michigan.gov">cozort1@michigan.gov</a>  <a href="mailto:orrism@michigan.gov">orrism@michigan.gov</a></p> <p>Lori Mayabb  Email: <a href="mailto:mayabbl@michigan.gov">mayabbl@michigan.gov</a></p>
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