

VARNUM

Bridgewater Place | Post Office Box 352
Grand Rapids, Michigan 49501-0352
Telephone 616 / 336-6000 | Fax 616 / 336-7000 | www.varnumlaw.com

Justin K. Ooms

Direct 616 / 336-6374
jkooms@varnumlaw.com

December 23, 2025

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-21870

Dear Ms. Felice:

Attached for electronic filing in the above-captioned matter, please find the Reply Brief of the Michigan Energy Innovation Business Council, Institute for Energy Innovation and Advanced Energy United, along with Proof of Service of same.

Thank you for your assistance in this matter.

Sincerely yours,

VARNUM



Justin K. Ooms

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Attachment(s)
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c: All parties of record.

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

REPLY BRIEF
OF
THE MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL,
INSTITUTE FOR ENERGY INNOVATION
AND
ADVANCED ENERGY UNITED

Justin K. Ooms
Laura A. Chappelle
VARNUM LLP
Attorneys for the
Michigan Energy Innovation Business Council,
Institute for Energy Innovation and
Advanced Energy United
333 Bridge Street, NW, Suite 1700
Grand Rapids, MI 49504
(708) 743-7173

Contents

I. INTRODUCTION..... 1

II. ARGUMENT..... 2

A. Consumers Fails to Acknowledge the Commission’s Authority Vis-à-vis Virtual Power Plants (“VPPs”) and Should be Required to Collaborate with Stakeholders on VPP Program Development..... 2

B. Because Many of the Same End-Use Customers Are Using Direct Current Fast Chargers (“DCFCs”) as are Charging at Home, Staff’s Attempt to Isolate Cost of Service for DCFCs from EV Charging More Generally Does not Succeed.4

C. In Light of the Lack of Clear Subsidy to EV Customers Under Rate GP, Staff’s and Walmart’s Urgency to Develop a DCFC-Specific Rate is Misplaced. 5

III. CONCLUSIONS AND PRAYER FOR RELIEF..... 6

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I. INTRODUCTION

This Reply Brief is filed on behalf of the Michigan Energy Innovation Business Council (“Michigan EIBC”), the Institute for Energy Innovation (“IEI”) and Advanced Energy United (“United”; collectively with Michigan EIBC and IEI, “MEIU”)¹ by their attorneys, VARNUM LLP. Except as may be expressly modified in this Reply Brief, MEIU continue to advocate the positions taken in their Initial Brief and hereby incorporate the responses to other parties’ positions already contained therein as if fully contained in this Reply Brief. Failure to address any issues or positions raised by other parties—or failure to repeat responses previously provided in MEIU’s Initial Brief—should therefore not be taken as agreement with those issues or positions or as a waiver of any position previously taken in MEIU’s Initial Brief.

¹ The positions expressed in this Reply Brief represent those of Michigan EIBC and United as organizations and not necessarily the views of individual members of these organizations with respect to any particular issue.

II. ARGUMENT

A. Consumers Fails to Acknowledge the Commission's Authority Vis-à-vis Virtual Power Plants ("VPPs") and Should be Required to Collaborate with Stakeholders on VPP Program Development.

In its initial brief, Consumers Energy Company ("Consumers" or the "Company") claims that "the Commission has no authority to require the Company to purchase or otherwise exercise the managerial discretion to use VPPs." Initial Brief of Consumers Energy Company, Case No. U-21870, Filing No. U-21870-0439 ("Consumers Initial Br") at 451; see also *id.* at 453 ("The Commission legally cannot, and should not, mandate the implementation of VPPs."). Consumers is correct insofar as, under *Union Carbide Corp v Public Service Com'n*, "The power to fix and regulate rates . . . does not carry with it . . . the power to make management decisions." 431 Mich 135, 148 (1988).

As the Michigan Supreme Court pointed out in that same case, however, the Commission may certainly deny recovery of costs incurred by Consumers when making management decisions that the Commission deems unreasonable or imprudent. According to the Court, "The commission possesses the authority to regulate a utility's rates and charges. It exercised that authority by precluding Consumers' recovery of those increased charges incurred as a result of the company's noneconomic operation of the Karn units." *Id.* at 149–50. The Court made this point even more clearly in *Consumers Power Co v Public Service Com'n* when characterizing its decision in *Union Carbide*, stating, "The PSC can encourage a specific management decision through the exercise of its ratemaking power, but it may not directly order the utility to make the decision." 460 Mich 148, 158 (1999).

The Great Lakes Renewable Energy Association ("GLREA") ably expands on this argument in the opening section of its brief. See Initial Brief of GLREA, Case No. U-21870, Filing No. U-21870-0444 ("GLREA Initial Br") at 2–9. After laying out the various statutes and

applicable case law that outline Commission authority and building on the record established by its witness in this case, GLREA states with respect to VPPs specifically:

The adoption of VPPs can directly mitigate the cost of utility service by creating a framework in which existing capacity and energy resources can be more efficiently utilized to reduce investment in generating plants such as peaking plants, can reduce PSCR costs in the form of fuel, purchased power, and transmission costs, while at the same time, VPPs can increase the reliability and resiliency of the grid and other resources necessary to service electric customers.

The Commission's regulatory authority under state law extends to ensuring the provision of reliable service at just and reasonable rates. In the context of a general rate case, the Commission is legally empowered to investigate every component of the utility's proposed revenue requirement, including the prudence of capital investments, operating expenses, and resource decisions. This direct authority governs the determination of cost-effectiveness and reliability in capacity planning. Similarly, the Commission's authority extends to regulation of all of the utility's PSCR costs under Act 304, Section 6j, et seq; MCL 460.6j, et seq, including fuel, purchased power, transmission and other costs.

GLREA Initial Br at 8. In other words, the Commission has no obligation to continue to approve Consumers' recovery of investments in traditional infrastructure or costs attributable to it to the extent that VPPs provide a more cost-effective and superior alternative. Thus, similar to how the Commission has, in the last number of the Company's rate cases, conditioned Consumers' recovery of any costs related to a distributed energy resource management system ("DERMS") on Consumers' presentation of an adequate business case following stakeholder input, see, *e.g.*, March 21, 2025 Order in Case No. U-21585 117-18, it may deny recovery of proposed traditional investments in favor of an alternative course of action, like exploring VPPs, that the Commission, in accordance with its own expertise, deems superior. Pursuing the use of VPPs is entirely consistent with the Commission's consideration of and an electric utility's obligation to use the least-cost resources available to safely and reliably meet customer energy needs.

MEIU thus reiterate their recommendation that, should the Commission pursuant to its lawful authority direct Consumers to engage with stakeholders on the development of VPPs, it

should do so in accordance with the four recommendations of MEIU witness Albers, including that (1) any VPP program should integrate Consumers' existing DR programs; (2) Consumers should develop a "robust data sharing platform" related to the VPP program; (3) Consumers be required to engage in robust stakeholder discussions regarding VPPs; and (4) Consumers should engage with an organization such as CHARGED, a collaboration among United, RMI, and GridLab that is working with Ameren Illinois to develop its own VPP tariff.

B. Because Many of the Same End-Use Customers Are Using Direct Current Fast Chargers ("DCFCs") as are Charging at Home, Staff's Attempt to Isolate Cost of Service for DCFCs from EV Charging More Generally Does not Succeed.

MEIU witness Schuster argues in response to testimony from Staff witness Krause that, even *if* permitting DCFCs to remain on Rate GP for the time being results in a subsidy (an assertion that Staff does not prove and MEIU do not concede), that alleged subsidy would be more than balanced out by overall charging revenue, such that EV drivers as a whole may be subsidizing other customers. 6 Tr 4182 ("[T]here is mounting evidence that load from EV charging customers as a whole contributes much less to system peaks when compared to other commercial and industrial customers, and that the revenue attributable to EV charging exceeds the cost of service over time."); see also Initial Brief of MEIU, Case No. U-21870, Filing No. U-21870-0437 ("MEIU Initial Br") at 23–24. The Staff push back on this argument in their Initial Brief, suggesting that "this is akin to saying industries hire people that are residential customers, therefore low industrial rates help utilities because more residential customers pay rates that lead to increased revenue in the aggregate." Initial Brief of Staff, Case No. U-21870, Filing No. U-21870-0433 ("Staff Initial Br") at 158–59.

Although this analogy is arguably the principle that underlies Consumers' economic development rate, it is not apposite to witness Schuster's argument here. In the Staff's analogy, the industrial and residential rates under discussion are driven by load that is unique to the

industrial and residential customers, respectively, without overlap. In the case of EVs, by contrast, the mobile nature of the load means that in many instances the *same* customer and even the *same* physical load (*i.e.*, the vehicle) is pulling kWh off the grid at multiple different places, including at home or out in public at a DCFC station. Although the customer name on the utility bill in each location may be different, the end-use customer ultimately paying for the power is the same. For this reason, it is not inappropriate to treat EV charging revenue on a more collective basis for cost-of-service purposes than traditional load may generally be, and Staff's analogy in support of an argument to the contrary is not compelling.

The Staff therefore fail to establish that the availability of Rate GP for DCFC charging represents a subsidy to EV-charging customers.

C. In Light of the Lack of Clear Subsidy to EV Customers Under Rate GP, Staff's and Walmart's Urgency to Develop a DCFC-Specific Rate is Misplaced.

As explained in Section II.B. above, the Staff fail to prove that EV-charging customers are being subsidized through Rate GP's availability to DCFCs. In the absence of a subsidy, the urgency with which the Staff approach the development of an alternative DCFC-specific rate is misplaced. Although both the Staff and Walmart recommend that a DCFC-specific rate be proposed as part of Consumers' next rate case (see Staff Initial Br at 159; Initial Brief of Walmart, Case No. U-21870, Filing No. U-21870-0432 ("Walmart Initial Br") at 7–9, both MEIU, through witness Schuster, and the Company, through witness Connolly, show that attempting to do so would be premature. See MEIU Initial Br at 24–27; Consumers Initial Br at 178–79.

Because there is no proven existing or imminent subsidy resulting from permitting DCFCs to have access to Rate GP, the Commission should not require Consumers to file a DCFC-specific rate proposal in its next rate case. This approach does not make it necessary to abandon the effort to explore DCFC-specific rates, however. Rather, as witness Schuster recommends, the

Commission should order the Company to engage in a thorough investigation of rates, engage in meaningful stakeholder outreach, and present its findings by a “reasonable later date.” See 6 Tr 4189; MEIU Initial Br at 26.

III. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, the Michigan Energy Innovation Business Council, the Institute for Energy Innovation and Advanced Energy United continue to respectfully request that the Commission:

- (a) Accept Consumers’ forecast of EV adoption as reasonable;
- (b) Adopt Consumers’ proposed “enhancements” to its EV rebate programs, subject to the modifications advocated by MEIU as stated herein;
- (c) Reject Consumers’ proposal to cut the incentive provided under the PTR program in half unless and until the Company provides evidence that the current incentive levels exceed the value provided by PTR participants;
- (d) Reject the Staff’s recommendation to close Rate GP to EV charging customers and to require Consumers to file an EV fast charging rate proposal in its next rate case;
- (e) Direct Consumers, as a prerequisite for filing an EV fast charging rate proposal in the future, to conduct a comprehensive evaluation of best practices as it relates to DCFC tariffs being implemented in other states and countries, to conduct a stakeholder convening to gather key stakeholder and industry feedback on issues related to DCFC tariffs and demand charges, and to present its findings and propose a long-term plan for the eventual implementation of an appropriate DCFC tariff;
- (f) Develop an electric heating/heat pump rate for inclusion in its next rate case;
- (g) Explicitly confirm its expectation that Consumers continue to make its inventory of equipment with long acquisition lead times available to DER and EV projects initiated by third parties on the same basis that such equipment is available to the utility for projects that it initiates;
- (h) Direct Consumers to work with stakeholders to develop a VPP program in line with that recommended by CEO witnesses Kenworthy and Boehke; and
- (i) Grant such other relief as the Commission deems lawful, necessary, reasonable or prudent.

Respectfully submitted,

VARNUM LLP
Attorneys for the Michigan Energy Innovation
Business Council, the Institute for Energy
Innovation and Advanced Energy United

Justin K.

Digitally signed by: Justin K. Ooms
DN: CN = Justin K. Ooms email =
JKOoms@varnumlaw.com C = US
Date: 2025.12.23 11:15:50 -05'00'

December 23, 2025

By: **Ooms**

Justin K. Ooms (P82065)
Laura A. Chappelle (P42052)
333 Bridge Street NW
Suite 1700
Grand Rapids, MI 49504
(616) 336-6374
(708) 743-7173

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Case No. U-21870

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

Pamela Fox, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on Tuesday, December 23, 2025, she served a copy of Michigan Energy Innovation Business Council, Institute for Energy Innovation, and Advanced Energy United's Reply Brief along with this Proof of Service upon those individuals listed on the attached Service List via email.

Pamela
Fox

Digitally signed by: Pamela Fox
DN: CN = Pamela Fox email =
pfox@varnumlaw.com C = US
Date: 2025.12.23 11:16:21 -
05'00'

Pamela Fox

<p><u>Administrative Law Judge</u> Honorable Jonathan F. Thoits thoitsj@michigan.gov</p> <p><u>Consumers Energy Company</u> Spencer A. Sattler Mark R. Ruskiewicz Gary A. Gensch Jr. Evan B. Keimach Bret A. Totoraitis Anne M. Uitvlugt spencer.sattler@cmsenergy.com mark.ruskiewicz@cmsenergy.com gary.genschjr@cmsenergy.com evan.keimach@cmsenergy.com bret.totoraitis@cmsenergy.com anne.uitvlugt@cmsenergy.com mpsc.filings@cmsenergy.com</p> <p><u>Hemlock Semiconductor Operations, LLC Solar Technology LLC</u> Jennifer U. Heston jheston@potomaclaw.com</p> <p><u>Great Lakes Renewable Energy Association</u> Don L. Keskey donkeskey@publiclawresourcecenter.com</p> <p><u>Walmart, Inc.</u> Melissa M. Horne mhorne@hcc-law.com</p> <p><u>Attorney General</u> Celest R. King* Lucas Wollenzien* Sebastian Coppola* Gille1@michigan.gov Wollenzien1@michigan.gov Ag-enra-spec-lit@michigan.gov sebcoppola@corplytics.com</p>	<p><u>MPSC</u> Amit T. Singh Adam M. Cozort Alena M. Clark Daniel E. Sonneveldt Nicholas Q. Taylor Michael J. Orris Mike Byrne* Bill Stosik* David Chislea* Bob Nichols* Nick Revere* Lori Mayabb* Singha9@michigan.gov orrism@michigan.gov sonneveldtd@michigan.gov taylorn10@michigan.gov clarka55@michigan.gov cozortal@michigan.gov byrnem@michigan.gov stosikb@michigan.gov chislead@michigan.gov nicholsb@michigan.gov reveren@michigan.gov mayabbl@michigan.gov</p> <p><u>Michigan Cable Telecommunications Association ("MCTA")</u> Sean P. Gallagher Jon Austin sgallagher@fraserlawfirm.com jaustin@fraserlawfirm.com</p> <p><u>Citizens Utility Board of Michigan ("CUB")</u> John Liskey john@liskeypllc.com</p> <p><u>Kroger</u> Justin Bieber jbieber@energystrat.com</p>
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*Receives Confidential Materials

<p><u>The Kroger Co. ("Kroger")</u> Kurt J. Boehm Jody Kyler Cohn Michael L. Kurtz kboehm@bkllawfirm.com jkylercohn@bkllawfirm.com mkurtz@bkllawfirm.com</p> <p><u>Michigan Environmental Council</u> <u>Natural Resources Defense Council</u> <u>Sierra Club Citizens Utility Board of Michigan</u> Tracy Jane Andrews* Christopher M. Bzdok* Holly L. Hillyer* Natasha Fowles* Jackson Neme* Tyler Comings* Tanya Stasio* Jordan Burt* Caroline Palmer* Matt Bandyk tjandrews@tropospherelegal.com chris@tropospherelegal.com holly@tropospherelegal.com natasha@tropospherelegal.com jackson@tropospherelegal.com tyler.comings@aeclinic.org tanya.stasio@aeclinic.org Jordan.burt@aeclinic.org cpalmer@synapse-energy.com mbandyk@synapse-energy.com</p> <p><u>Urban Core Collective ("UCC")</u> Mark Templeton* Jacob R. Schuhardt* templeton@uchicago.edu j_schuhardt@uchicago.edu aelc_mpsc@lawclinic.uchicago.edu</p>	<p><u>Association of Businesses Advocating Tariff Equity (ABATE)</u> Benjamin J. Holwerda Stephen A. Campbell Michael J. Pattwell James Dauphinais Jessica York Christina Hildebrandt scampbell@clarkhill.com bholwerda@clarkhill.com mpattwell@clarkhill.com jdauphinais@consultbai.com jyork@consultbai.com childrebrandt@consultbai.com</p> <p><u>The Ecology Center</u> <u>The Environmental Law & Policy Center</u> <u>("ELPC") Union of Concerned Scientists</u> <u>("USC") Vote Solar</u> Daniel Abrams* Katie Duckworth* Alondra Estrada* Katie Toolan* dabrams@elpc.org kduckworth@elpc.org aestrada@elpc.org ktoolan@elpc.org mpscdockets@elpc.org</p>
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<p><u>Foundry Association of Michigan</u> <u>Energy Michigan Michigan Energy</u> <u>Innovation Business Council</u> <u>Institute for Energy Innovation Advanced</u> <u>Energy United</u> Laura A. Chappelle Timothy J. Lundgren Justin K. Ooms lachappelle@varnumlaw.com tjlundgren@varnumlaw.com jkooms@varnumlaw.com</p>	<p><u>Michigan Electric Transmission Company,</u> <u>LLC</u> Richard J. Aaron* Courtney F. Kissel* Olivia R.C.A. Flower* Hannah Buzolits* Anthony J. Hunt* Josh L. Kluzak Raaron@dykema.com ckissel@dykema.com oflower@dykema.com hbuzolits@dykema.com ahunt@dykema.com jkluzak@dykema.com</p>
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