

January 6, 2026

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 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 Ms. Felice:

Enclosed for electronic filing in the above-captioned case, please find **Consumers Energy Company's Application for Leave to Appeal Ruling on Motion to Exceed Page Limit and Brief in Support.**

This is a paperless filing and is therefore being filed only in a PDF. Also included is a Proof of Service showing electronic service upon the persons included in Attachment 1.

Sincerely,

Bret A. Totoraitis
Phone: 517-788-0835
Email: bret.totoraitis@cmsenergy.com
cc: Parties per Attachment 1 to the Proof of Service.

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

CONSUMERS ENERGY COMPANY’S
APPLICATION FOR LEAVE TO APPEAL RULING ON
MOTION TO EXCEED PAGE LIMIT

In accordance with Rule 433 of the Michigan Public Service Commission’s (“MPSC” or the “Commission”) Rules of Practice and Procedure, Mich Admin Code R 792.10433, Consumers Energy Company (“Consumers Energy” or the “Company”) submits this Application for Leave to Appeal the December 26, 2025 Ruling (“Ruling”) issued by Administrative Law Judge Jonathan F. Thoits (“ALJ”) denying the Company’s motion to exceed the 30-page limit established by the ALJ for reply briefs in this case. In support of its Application for Leave to Appeal, Consumers Energy states as follows:

1. In the July 8, 2025 Scheduling Memo in this proceeding (the “Scheduling Memo”),¹ the ALJ required that reply briefs “shall be limited to 30 pages, exclusive of the table of contents.” The Scheduling Memo also stated that “briefs shall comply with the requirements set forth herein except as otherwise permitted by motion granted by the ALJ.”

2. The parties, other than Consumers Energy, filed 13 initial briefs in this case totaling more than 950 pages. The large majority of these briefs involve issues that disagree with some

¹ The ALJ subsequently amended the Scheduling Memo on September 5, 2025 and October 16, 2025, but these amendments did not change the portions of the original Scheduling Memo relevant to this Application for Leave to Appeal.

portion of the Company's Application or propose that the Commission impose new requirements on Consumers Energy. While the Company was able to anticipate and address most of these arguments and claims in its Initial Brief, there were also several new or expanded statements, claims, and arguments that the parties presented in their initial briefs. The Company needed to address these in its Reply Brief since the Company had not previously had any opportunity to respond to such arguments and claims and to ensure that the ALJ and the Commission have a complete understanding of the Company's position on these issues. The ALJ and the Commission should not be deprived of these arguments that will assist in considering these contested issues in a Proposal for Decision or a final order.

3. Consumers Energy worked to be concise in its Reply Brief and did not address issues that were addressed in its Initial Brief. Despite this effort, the Company's filed Reply Brief totaled 66 pages. Therefore, the Company filed a motion along with its Reply Brief asking the ALJ to permit the Company to exceed the 30-page limit established in the scheduling memo and to accept the Company's Reply Brief as filed.

4. On December 26, 2025, the ALJ issued the Ruling denying the Company's motion. In the Ruling, the ALJ concluded that it is "very likely that the Reply Brief includes many arguments which are repetitive of the arguments included in Consumers[Energy]'[s] Initial Brief." Ruling, page 2. The ALJ apparently based this conclusion on his review of the table of contents included in the Company's Reply Brief (though he never indicated what material in the table of contents allegedly supports his conclusion) and on the confusing claim that the Company's motion and Reply Brief "contradicted" each other because the motion refers to "new and expanded arguments" of other parties and to issues that were "adequately addressed" in the Company's Initial Brief.

5. Contrary to the ALJ's unfounded conclusion, *none* of the arguments offered in the Company's originally filed Reply Brief² are "repetitive of the arguments included in Consumers[Energy]'[s] Initial Brief." Even the most cursory review of the issues presented in the Company's originally filed Reply Brief demonstrates that each of the Company's arguments responds to some new statement, issue, claim, or argument in the opposing parties' initial briefs.

6. The Commission should overturn the ALJ's ruling rejecting the Company's Motion for several reasons. First, the 30-page limit itself arbitrarily and capriciously deprived the Company of its rights under the Administrative Procedures Act of 1969 to "present . . . written arguments on issues of law and policy and an opportunity to present . . . argument on issues of fact" in the context of an electric rate case for one of the state's two largest electric utilities. The ALJ unreasonably failed to give adequate review or consideration to Consumers Energy's Motion or its submitted Reply Brief. Second, the ALJ's proffered reasons for denying the Motion are illogical and unreasonable. The ALJ's conclusion that there was some contradiction in the Motion is clearly unwarranted. Finally, the ALJ's refusal to consider the originally filed Reply Brief would be manifestly unjust and, if allowed to stand, would deprive Consumers Energy of its right to due process in this proceeding.

² Per the ALJ's instruction in the Ruling, the Company submitted a truncated version of its Reply Brief on January 5, 2026. In order to achieve the page limit imposed by the ALJ, the Company was forced to entirely forego discussion of certain new claims and arguments from opposing parties' initial briefs or to dramatically truncate portions of its originally filed responses in a way that materially deprived the Company of the opportunity to respond in full to aspects of the other parties' claims and arguments.

WHEREFORE, Consumers Energy Company requests that the Commission act expeditiously to (i) grant Consumers Energy's Application for Leave to Appeal, (ii) overturn the Administrative Law Judge's decision denying the Company's motion, and (iii) direct the Administrative Law Judge to consider the entirety of Consumers Energy's originally submitted reply brief in this case before rendering the Proposal for Decision.

Respectfully submitted,

CONSUMERS ENERGY COMPANY



Date: January 6, 2026

Gary A. Gensch, Jr. (P66912)
Bret A. Totoraitis (P72654)
Attorneys for Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201
(517) 788-0698

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

CONSUMERS ENERGY COMPANY’S
BRIEF IN SUPPORT OF ITS APPLICATION FOR LEAVE TO APPEAL
RULING ON MOTION TO EXCEED PAGE LIMIT

Consumers Energy Company (“Consumers Energy” or the “Company”) seeks a Commission Order pursuant to Rule 433 of the Michigan Public Service Commission’s (“MPSC” or the “Commission”) Rules of Practice and Procedure, Mich Admin Code R 792.10433, granting its Application for Leave to Appeal the December 26, 2025 Ruling (“Ruling”) issued by Administrative Law Judge Jonathan F. Thoits (“ALJ”) and overturning the Ruling. The Ruling denied the Company’s motion filed on December 23, 2025 asking permission to exceed the 30-page limit established by the ALJ for reply briefs. Consumers Energy further asks the Commission to direct the ALJ to consider the entirety of Consumers Energy’s originally submitted Reply Brief (filed on December 23, 2025)¹ in this case before rendering the Proposal for Decision (“PFD”). Because the PFD is scheduled to be issued on January 27, Consumers Energy requests that the Commission issue the requested order at its first available meeting in January 2026.

¹ Per the ALJ’s instruction in the Ruling, the Company submitted a truncated version of its Reply Brief on January 5, 2026. In order to achieve the page limit imposed by the ALJ, the Company was forced to entirely forego discussion of certain new claims and arguments from opposing parties’ initial briefs or to dramatically truncate portions of its originally filed responses in a way that materially deprived the Company of the opportunity to respond in full to aspects of the other parties’ claims and arguments.

I. BACKGROUND

In the July 8, 2025 Scheduling Memo in this proceeding (the “Scheduling Memo”),² the ALJ granted intervention to 23 discrete parties in this case (not including the MPSC Staff) and issued instructions for the case, including a requirement that reply briefs “shall be limited to 30 pages, exclusive of the table of contents.” The Scheduling Memo also stated that “briefs shall comply with the requirements set forth herein except as otherwise permitted by motion granted by the ALJ.” The Scheduling Memo included no discussion of the basis for the 30-page limit or explanation of why that limit should be regarded as adequate for briefing in an electric rate case.

On December 5, 2025, the parties filed their initial briefs in this case. The parties other than Consumers Energy filed 13 initial briefs in this case totaling more than 950 pages. The large majority of these briefs involve issues that disagree with some portion of the Company’s Application or propose that the Commission impose new requirements on Consumers Energy. While the Company was able to anticipate and address most of these claims and arguments in its Initial Brief, there were also several new or expanded claims and arguments that the parties’ presented in their initial briefs. The Company needed to address these in its Reply Brief since the Company had not previously had any opportunity to respond to such claims or arguments and to ensure that the ALJ and the Commission have a complete understanding of the Company’s position on these issues. The ALJ and the Commission should not be deprived of these responses that will assist in considering these contested issues in a PFD or a final order.

Consumers Energy worked to be concise in its Reply Brief and did not address claims or arguments that were addressed in its Initial Brief. Despite this effort, the Company’s originally

² The ALJ subsequently amended the Scheduling Memo on September 5, 2025 and October 16, 2025, but these amendments did not change the portions of the original Scheduling Memo relevant to this Application for Leave to Appeal.

filed Reply Brief totals 66 pages. Therefore, the Company filed a motion along with its Reply Brief asking the ALJ to permit the Company to exceed the 30-page limit established in the Scheduling Memo and to accept the Company's Reply Brief as filed.

Nevertheless, on December 26, 2025, the ALJ issued the Ruling denying the Company's Motion. In the Ruling, the ALJ concluded that it is "very likely that the Reply Brief includes many arguments which are repetitive of the arguments included in Consumers[Energy]'[s] Initial Brief." Ruling, page 2. The ALJ based this conclusion on his review of the table of contents included in the Company's Reply Brief (though he never indicated what material in the table of contents allegedly supports his conclusion) and on the confusing claim that the Company's Motion and Reply Brief "contradicted" each other because the motion refers to "new and expanded arguments" of other parties and to issues that were "adequately addressed" in the Company's Initial Brief. It appears that the ALJ failed to perform even a cursory review of the issues that Consumers Energy identified for responses in its record-short 66-page Reply Brief.

Contrary to the ALJ's unfounded conclusion, none of the arguments offered in the Company's originally filed Reply Brief are "repetitive of the arguments included in Consumers[Energy]'[s] Initial Brief." Even the most cursory review of the issues presented in the Company's originally filed Reply Brief demonstrates that each of the Company's arguments responds to some new claim or argument in the opposing parties' initial briefs. Absent the Company's response in its originally filed Reply Brief, the Company would have been deprived of any opportunity to respond to these new claims and arguments.

II. STANDARD FOR REVIEW

Rule 433 provides that the Commission "shall grant an application and review the presiding officer's rulings" if any of the following apply:

(a) A decision on the ruling before submission of the full case to the commission for final decision will materially advance a timely resolution of the proceeding.

(b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large.

(c) A decision on the ruling before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order. [R 792.10433(2).]

Although the rule only requires one of these provisions to be satisfied in order to grant the application and review the ALJ's Ruling, Consumers Energy submits that all three provisions are satisfied in this case.

With respect to provision (a), the ALJ's refusal to consider the Company's responses to the numerous new claims and arguments raised by the parties in their initial briefs enhances the likelihood that the ALJ will render proposed decisions on issues that are not properly supported thereby increasing the need for lengthy exceptions and replies to exceptions. In essence, the ALJ is shifting the burden of the full initial consideration of the arguments in this case from himself to the Commission when there is precious little time remaining in the case before a final order is due.

With respect to provision (b), Consumers Energy will suffer substantial harm if it is not allowed to respond to claims and arguments raised for the first time in the initial briefs filed by opposing parties. This case involves Consumers Energy's constitutional right to have rates approved that are sufficient to compensate the Company for its reasonable costs of doing business plus a reasonable return on its invested capital. The law places the burden on Consumers Energy to prove its costs and support the reasonableness of its request, but the Company cannot satisfy that burden where it is not permitted to respond to claims and arguments offered by other parties attempting to reduce the Company's rate recovery. Fundamental concepts of fairness and due

process require that Consumers Energy be permitted to respond to the issues raised by other parties which attack the Company's request for rate relief.

With respect to provision (c), the Commission has adopted rules by its orders providing that parties should have the opportunity to submit reply briefs that allow parties to "rebut[] . . . the arguments contained in other parties' initial briefs." R 792.10434(3). The ALJ's Ruling is not consistent with this principle. By adopting an unreasonably low page limitation, and subsequently by rejecting a motion to extend it, the ALJ has effectively deprived Consumers Energy of the Commission-ordered opportunity to file such a reply brief as to any issues not capable of being addressed within the limit. While the Company does not dispute the ALJ's general discretion to limit the length of reply briefs (see Ruling, page 2, note 6), that discretion may not be exercised arbitrarily or capriciously. See MCL 24.306(1)(e). Here, Consumers Energy submits that it was; therefore, the ALJ's decision deprived Consumers Energy of the right to submit a reply brief rebutting other parties' arguments as specifically provided for by the Commission pursuant to the Rules of Practice and Procedure before the MPSC.

III. ARGUMENT

A. The 30-Page Limit and the Ruling Denying the Company's Request to Exceed the Limit Constitute Unreasonable, Arbitrary, and Capricious Violations of Consumers Energy's Right to Present Written Arguments on Issues of Law, Policy, and Facts Under the APA

To Consumers Energy's knowledge, ALJ Thoits is the only ALJ practicing before the Commission who has ever imposed a page limit on reply briefs in electric rate cases, and this case is the first time such a page limit has been imposed on reply briefs for one of the state's two largest electric utilities. Given the unprecedented nature of this action, it would have been reasonable to expect that the ALJ would offer some explanation of the basis for the 30-page limit that he chose

or why that limit should be regarded as adequate for briefing in an electric rate case. However, the Scheduling Memo included no such discussion or explanation.

Section 72 of the Administrative Procedures Act of 1969 (“APA”), MCL 24.272, provides that “parties shall be given an opportunity to present . . . written arguments on issues of law and policy and an opportunity to present . . . argument on issues of fact.” Consistent with that requirement, Rule 434 of the Rules of Practice and Procedure Before the MPSC permits parties to file “[i]nitial briefs and reply briefs . . . at the discretion of the parties unless the commission or presiding officer requires the filing of briefs and reply briefs by all parties.” R 792.10434(2). Rule 434 further provides that reply briefs are meant to allow “rebuttal of the arguments contained in other parties’ initial briefs” and are, therefore, confined to such rebuttal. R 792.10434(3).

Electric rate cases are complex cases that address a very large number of discrete issues. They are highly technical cases and very fact dependent. For that reason, oral closing arguments after the close of the evidentiary record, which would be typical in most other civil litigation settings, are impractical. The initial briefs and reply briefs used in MPSC proceedings function as the “closing arguments” that allow the parties to present “argument on issues of fact” as required by the APA. They are the parties’ sole opportunity to summarize the evidence presented in the case and explain how the evidence supports the facts in favor of the parties’ positions. Similarly, the initial and reply briefs serve the function that would ordinarily be served through negotiation of jury instruction in a civil court, which allows the parties to present arguments on any controlling issues of law or policy that might govern issues in the rate case, thus also fulfilling the APA’s requirement that parties be given an opportunity to present “written arguments on issues of law and policy.”

Section 80 of the APA, MCL 24.280, specifies the powers and duties of the presiding officer in administrative proceedings. Pertinent to this discussion, the APA authorizes the ALJ to “[r]egulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.” *Id.* (Emphasis added.) The APA does not provide an ALJ any other specific authority related to briefs, including no specific authority related to limiting the length of briefs. Nevertheless, the Commission has seen fit to recognize an ALJ’s discretion to “issue directives, pursuant to statute, the administrative rules, and the Michigan Court Rules, that may include limiting the length and content of reply briefs.” MPSC Case No. U-20322, September 26, 2019 Order, page 6 (“U-20322 Order”). However, the Commission offered no clarifying context or instructions about an ALJ’s authority to limit the length of reply briefs in its U-20322 Order. The issue in Case No. U-20322 was not about an ALJ’s directions regarding the length of a utility’s reply brief. Instead, that case involved an ALJ’s direction that reply briefs should be confined to rebuttal of arguments in a party’s initial brief and the ALJ’s finding that the utility’s reply brief in that case included several sections that merely restated the utility’s initial brief. So, the factual context of that case also is unhelpful in understanding what limits the Commission intended by recognizing such an authority. In fact, it is unclear why the Commission included the language about an ALJ’s authority to limit the length of briefs in that order at all, since there was no question related to that issue.

Consumers Energy does not argue that the Commission lacks any power to grant *some* authority to an ALJ to limit the length of reply briefs or that it meant to convey *some* such authority in the U-20322 Order. However, as an example, it should be apparent that limiting briefs to only a single page would run afoul of the APA’s requirement that parties must be given “an opportunity to present . . . written arguments on issues of law and policy and an opportunity to present . . .

argument on issues of fact” when those issues of law, policy, and fact have been presented for the first time in another party’s initial brief. The Commission itself does not have the power to violate the requirements of the APA, so it cannot have the power to grant such authority to the ALJ. Therefore, despite the broad and unspecific language in the U-20322 Order, it is clear that an ALJ does not have carte blanche power to limit the length of reply briefs to any degree the ALJ pleases. The Company does not believe the Commission meant to convey such unlimited authority with its U-20322 Order. Therefore, there is a question about what limits there are to the authority that the Commission granted to ALJs under the U-20322 Order.

Since the Commission did not specify the limits, the APA is once again helpful in understanding what those limits are. Section 106 of the APA, MCL 24.306, provides grounds for a reviewing court’s reversal of a decision by an administrative agency. Section 106 states that a reviewing court

shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

* * *

(c) Made upon unlawful procedure resulting in material prejudice to a party.

* * *

(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion [*Id.*]

Therefore, an ALJ’s discretion under the U-20322 Order to limit the length of reply briefs in an electric rate case is, at the very least, limited such that it cannot deprive a party of its right under section 72 of the APA to have an opportunity to present written arguments on issues of law, policy, and fact (which would constitute an “unlawful procedure resulting in material prejudice to a party”) and the ALJ cannot set the length of the reply brief arbitrarily or capriciously. Here, both the

ALJ's original 30-page limit on reply briefs as well as his Ruling denying the Company's Motion to submit a 66-page reply brief violated those limitations on his authority to impose the page limit that he imposed.

“A ruling is arbitrary and capricious when it lacks an adequate determining principle, when it reflects an absence of consideration or adjustment with reference to principles, circumstances, or significance, or when it is freakish or whimsical.” *Wescott v Civil Serv Comm*, 298 Mich App 158, 162; 825 NW2d 674 (2012). Given the clear legal framework favoring – in fact requiring – parties' opportunities to present legal, policy, and factual arguments, the ALJ should have given earnest consideration to the reasonableness and efficacy of any limits he placed on the parties' opportunity to present reply briefs in this case. The ALJ failed to do so. He offered no “adequate determining principle” for his original 30-page limit; in fact, he offered no determining principle at all. The ALJ's decision “reflects an absence of consideration or adjustment” because he does not appear to have evaluated (i) the amount of briefing typically required for an electric utility in an electric rate case, (ii) the number of pages of material the utility was called upon to respond to, or (iii) the number or nature of the contested issues generated by the opposing parties (or any other circumstances that might be useful in determining what page limit would provide an adequate opportunity for a utility to respond in reply briefs in an electric rate case). Furthermore, it is evident that the ALJ failed to give even a cursory review to the issues identified in the Company's originally filed Reply Brief before denying the motion to allow a longer brief, even though the material needed to do so was in his possession.

Rather than taking the opportunity of the Company's Motion to make an “adjustment” to his already defective page limit, the ALJ merely *assumed* that it is “very likely that the Reply Brief includes many arguments which are repetitive of the arguments included in the Consumers' Initial

Brief.” The ALJ need not have speculated about what was “very likely” about the content of the Company’s Reply Brief. He had the conclusive answer in his hands. By the ALJ’s own admission, the table of contents in the Company’s Reply Brief listed 35 separately titled sections.³ See Ruling, page 2. Even if each of those sections included only a single contested issue (which would not be an accurate assumption), under the ALJ’s original 30-page limit, the Company would have had less than one page in which to discuss each of the complex and technical issues in its Reply Brief.

Contrary to the ALJ’s speculation, the Company went to great efforts to minimize the length of its originally filed Reply Brief and even made the difficult decision to entirely forego arguments on some legitimate new issues raised by opposing parties in their initial briefs. In order to comply with the ALJ’s arbitrary demand to further reduce the reply brief to 30 pages by January 5, 2026, the Company has been forced to further cut legitimate arguments that it has a right for the Commission to hear under the APA and to dramatically truncate its responses on other issues in a way that stripped out material and important aspects of the Company’s response. The ALJ has not demonstrated that he applied any “consideration or adjustment with reference to principles, circumstances, or significance” that would require either the original page limit or the rejection of the Company’s request to submit a 66-page reply brief in this case.

If the ALJ had performed any analysis to determine what an appropriate page limit might be, it would have been immediately apparent that his 30-page limit was unreasonable. The Company has reviewed the 10 most recent reply briefs filed in electric rate cases by the two largest electric utilities in Michigan for cases that have reached a final Commission order. Those 20 reply briefs date back more than 16 years to DTE Electric’s electric rate case in Case No. U-15768. During that 16-year period, the shortest reply brief ever filed by one of the state’s two largest

³ As discussed further below, there were actually 63 discrete new claims or arguments contained within the topics covered by those 35 headings in the Company’s originally filed Reply Brief.

electric utility companies was 74 pages – nearly two and a half times longer than the arbitrary 30-page limit established by the ALJ. The Company’s proposed 66-page reply brief that the ALJ rejected would have been the record-shortest reply brief for at least the last 16 years and probably more. Consumers Energy’s shortest reply brief in that 16-year period was 80 pages (See MPSC Case Nos. U-16794 and U-21389). Many of the major electric utilities’ reply briefs over the last 16 years have required considerably more pages to respond to new arguments in opposing parties’ initial briefs. DTE Electric’s longest reply brief over the past 16 years was 238 pages (see MPSC Case No. U-20162) and Consumers Energy’s longest reply brief was 278 pages (see MPSC Case No. U-20963). The average length of the major electric utilities’ reply briefs over the past 16 years has been 160.8 pages. The median length has been 149.5 pages. Because the Company only included the last 10 reply briefs for each utility in an electric rate case that has reached a final order, these statistics do not even count DTE Electric’s reply brief in its currently pending electric rate case, Case No. U-21860, which was 229 pages. Including that brief increases both the average and the median over the last 16 years. Given these statistics, it is clear that the 30-page limit set by the ALJ and even the 66-page reply brief the ALJ rejected are unreasonably short.

There are valid reasons why electric utilities such as Consumers Energy require longer reply briefs than the ALJ prefers. The utilities bear the burden of proof on *every* cost element in an electric rate case. Furthermore, the utilities have almost no control over the number of contested issues that will ultimately be decided in the case. Because a rate case broadly demands a review of the entire cost structure of the business, opposing parties have considerable latitude to raise (or generate) an unlimited number of issues with respect to every cost element in the case. If the utility fails to respond to any issues raised by another party, no matter how trivial or unfounded, it risks an adverse outcome. Legal counsel for the utilities have an ethical duty to address each issue in

the utilities' briefs. Additionally, because the utility often has the final word on most evidentiary issues through rebuttal testimony, opposing parties have an incentive to try to overcome the arguments set forth in the utility's rebuttal testimony through creative claims and arguments in their initial briefs. As a result of these features of the ratemaking process, the utilities commonly require many more pages of briefing than other parties who can pick and choose as many or as few issues to discuss as they desire. The ALJ failed to inquire into or consider the reasons why electric rate case reply briefs may need to be longer than his preferred 30 pages, again highlighting the lack of "adequate determining principles" for the decision or the application of any appropriate "consideration or adjustment with reference to principles, circumstances, or significance."

The ALJ also failed to consider how the utilities' briefing needs in an electric rate case are materially different than those of other parties. Although many intervenors could spend an entire 30-page reply brief arguing in detail about a single issue if they chose to do so, the utilities do not have that same freedom. The unreasonably low 30-page limit set by the ALJ in this case would uniquely deprive the major utilities – and only the major utilities – of a fair and reasonable opportunity to argue their case, while still preserving the right of the numerous intervenors to attack the Company's case with impunity, particularly if two or more parties coordinated their briefing. Even outright misrepresentations of the record or specious legal arguments by opposing parties in their initial briefs could be immune from response by the utility as long as the other parties can generate enough new claims and arguments to force the utility to forego responses to legitimate issues in order to meet an arbitrary page limit. Of all the non-utility parties in an electric rate case, only the MPSC Staff shares some of the added institutional obligation to monitor all

aspects of the case as the utilities.⁴ Even for the MPSC Staff, however, it is clear that the ALJ's 30-page limit is frequently unreasonable. The Company reviewed the reply briefs filed by MPSC Staff in the same 20 major electric utility rate cases over the past 16 years discussed above. Although Staff's reply briefs are typically much shorter than those of the utilities, Staff's average and median reply briefs of 39 pages over the past 16 years have also exceeded the 30-page limit set by the ALJ. Staff's longest reply brief over the last 16 years in those 20 electric rate cases was 61 pages (see MPSC Case No. U-20963). Staff's reply briefs exceeded the 30-page limit in 17 of the 20 cases, with only three cases where Staff's reply brief would have been compliant with such a limitation.⁵ Again, the ALJ did not indicate that he performed any inquiry or gave any consideration to this type of information which would have informed a more reasonable approach to setting a page length for reply briefs.

Finally, with respect to the denial of the Company's Motion to extend the length of its reply brief, the ALJ failed to give any adequate consideration to the circumstances of this particular case. In this case, opposing parties filed 13 initial briefs totaling more than 950 pages. The large majority of these briefs involve issues that disagree with some portion of the Company's Application or propose that the Commission impose new requirements on Consumers Energy. The parties made numerous claims and arguments in their 950+ pages of initial briefs that attempt to respond to and overcome rebuttal testimony filed by the Company, and hence raise new issues not previously presented. Despite this fact, the ALJ's Ruling gave no consideration to the volume of material the Company was responding to. The ALJ's Ruling also gave no consideration to the

⁴ Though even Staff does not have the direct responsibility to ensure a reasonable return for the billions of dollars of investor funds at stake on the outcome of each electric rate case, nor are Staff's constitutional rights to rates that are sufficient to earn a reasonable return on invested capital and recover all reasonable costs at stake.

⁵ Staff's three reply briefs that would have met the ALJ's arbitrary page limit over the past 16 years were in Case Nos. U-18255 (21 pages), U-21297 (21 pages), and U-17735 (16 pages).

number of new issues or the nature of the issues included in the opposing parties' initial briefs. The nature of the issues is equally as important as the number of issues because not all issues are the same. Some issues can be addressed in a single paragraph with reference to one line of testimony or a single exhibit. Others require extensive analysis of numerous pieces of evidence or of complex legal issues.

By Consumers Energy's count, the other parties' initial briefs included at least⁶ 63 new claims or arguments that attempted to build upon the arguments previously offered by those parties' witnesses, which were raised for the first time in their initial briefs. As just a limited sample, these included such new claims as (i) Staff's new claim that it did not have a sufficient opportunity to evaluate whether its class cost estimate disallowance was double-counting excluded contingency costs, (ii) MNSC's new argument that the Company's rebuttal testimony is incorrect when it asserts that disallowances for certain generation projects include dollars already approved by the Commission in a previous case, (iii) the Attorney General's new argument that any credit concerns the Company has related to the impact of the equity ratio can be resolved simply by reducing capital expenditures, (iv) the Attorney General's new argument that only merchant plants, but not utility-owned generation plants, are riskier than distribution-only utilities for purposes of return on equity ("ROE") analysis, and (v) MNSC's new argument that federal and state law somehow require the Commission to allocate the costs of the Company's Advanced Metering Infrastructure ("AMI") program to industrial and commercial customers who do not even have an AMI meter. Although the Company reasonably addressed these 63 new arguments in only

⁶ The Company emphasizes that it is "at least" 63 new claims or arguments. The 63 claims and arguments identified only include those that the Company determined it absolutely needed to respond to in its originally filed Reply Brief. Given the onerous and unreasonable page limit set by the ALJ in this case, the Company had already made the difficult decision to allow certain other legitimate new issues to go without response. The Company's Reply Brief easily could have been longer to address all of the new issues raised by other parties in their initial briefs.

66 pages of reply brief, the ALJ's refusal to accept any reply brief over thirty pages forced the Company to entirely eliminate many of these arguments or dramatically truncate its response to these new arguments in a way that stripped out material and important aspects of the Company's response to meet the Ruling's direction to file a 30-page reply brief by January 5, 2026. By failing to consider any of this information, the ALJ's denial of the Company's motion, like his original 30-page limit, fails to demonstrate that he applied any "adequate determining principles" in making the decision or that he applied any appropriate "consideration or adjustment with reference to principles, circumstances, or significance." By definition, his denial of the Company's Motion was arbitrary and capricious.

For all of these reasons, the ALJ's 30-page limit and his denial of the Company's Motion are arbitrary and capricious. They also constitute an "unlawful procedure resulting in material prejudice" to Consumers Energy in that they effectively deprive the Company of its right to "present . . . written arguments on issues of law and policy and an opportunity to present . . . argument on issues of fact" as required under the APA. The Commission should overturn the ALJ's arbitrary page limit – or at least his arbitrary decision to deny the Company's Motion to extend that limit – and direct him to consider the entirety of the Company's originally filed Reply Brief in this case.

B. The ALJ's Rationale for Denying the Company's Motion Is Illogical and Unreasonable

The ALJ identified two bases for his denial of the Company's Motion to extend the page limit for its Reply Brief. First, he indicated that the denial was warranted by the supposed contradiction between the Motion's assertion that the other parties initial briefs included "several new and expanded arguments" and the fact that the table of contents in the Company's Reply Brief "lists 35 separately titled sections of argument." Ruling, page 2. The ALJ did not explain why

those two things are contradictory. They are not. If the other parties' initial briefs include "several new and expanded arguments," one should expect the Company's reply brief to include several "titled sections of argument" to separate, identify, and organize the Company's response to those new and expanded arguments. The ALJ's claim does not make sense.

There are numerous potential topics and subtopics within any given rate case, and there can be a wide variety of different arguments that relate to each potential topic. For example, within the broader topic of "capital structure," parties might discuss the subtopic of "ROE", and the further subtopic of "the Discounted Cash Flows ("DCF") model." But, within that subtopic, parties might make any number of discrete arguments – claiming, for example, that (i) another parties' expert used the wrong growth rate for the model or (ii) the source of the dividend forecasts was flawed or (iii) the model should be specified to consider multi-stage growth versus single-stage perpetual growth or (iv) the results should be regarded as unreasonable to the extent they exceed the growth rate of the economy as a whole or (v) any other conceivable arguments – on and on and on. The headings in the Company's briefs are used to orient the ALJ, the parties, and the Commission to the general topics and subtopics being discussed and occasionally, to the break-point between one or more discrete arguments when it doesn't make logical or organizational sense to group multiple arguments together. Therefore, it doesn't necessarily make sense to assume that headings in a brief correspond on a one-for-one basis to the number of claims or arguments the Company is responding to. It certainly makes no sense to claim that the number of headings somehow contradicts the Company's averment that the other parties' initial briefs raised "several new and expanded arguments." That could be true whether the brief had only one heading or a thousand. Because the ALJ's first rationale is illogical, his conclusion based on that rationale is unreasonable.

Second, the ALJ claimed that the denial was warranted by the supposed contradiction between the Motion’s assertion that the other parties initial briefs included “several new and expanded arguments” and the Motion’s other observation that the Reply Brief addressed issues that were not “adequately addressed” in the Company’s Initial Brief. Ruling, page 2. Again, the ALJ failed to explain why he believes those two phrases are contradictory. Once again, they are not. Indeed, it is hard to imagine how any claim or argument presented for the first time in an opposing parties’ initial brief could ever have been “adequately addressed” in the Company’s Initial Brief, which was filed on the same day. In this situation, those were just two different ways for the Company to say the same thing. Any claims or arguments that were not addressed at all in the Company’s Initial Brief because the claim or argument was new in an opponent’s initial brief was, by definition, not “adequately addressed” in the Company’s Initial Brief. Those are not contradictory claims. They are mutually reinforcing claims. Again, the ALJ’s rationale is illogical, not warranted by the language Consumers Energy used in its motion, and any conclusion based on that rationale is unreasonable.

C. The ALJ’s Page Limit and Denial of Consumers Energy’s Motion Violate the Company’s Right to Due Process

Both the U.S. and Michigan State Constitutions provide that no person shall be “deprived of life, liberty or property without due process of law.” Const 1963, art 1, § 17; see also US Const, Am XIV. The United States Supreme Court has recognized that the Due Process Clause includes at least two fundamental requirements: the right to (i) notice and (ii) an opportunity to be heard at a meaningful time and in a meaningful manner. *LaChance v Erickson*, 522 US 262, 266; 118 S Ct 753; 139 L Ed 2d 695 (1998); *Mathews v Eldridge*, 424 US 319, 333; 96 S Ct 893; 47 L Ed 2d 18 (1976). “The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues.” *Holt v Virginia*, 381 US 131, 136; 85 S Ct

1375; 14 L Ed 2d 290 (1965). Furthermore, the U.S. Supreme Court has held that “[d]ue process requires that there be an opportunity to present every available defense.” *Lindsey v Normet*, 405 US 56, 66; 92 S Ct 862; 31 L Ed 2d 36 (1972).

As discussed previously, the briefs in an electric rate case function as the parties’ closing arguments in the case. Michigan courts have recognized a parties’ due process right to offer a closing argument. *United Coin Meter Co v Lasala*, 98 Mich App 238, 242; 296 NW2d 221 (1980). The Court of Appeals in *United Coin* held that “it was reversible error to refuse to allow counsel closing argument.” *Id.* The Court recognized that the “trial court has considerable power in matters of trial conduct and may limit the arguments of counsel. . . . However, to completely deny closing argument to a party who requests it is an abuse of discretion.” *Id.*⁷ Similar to the discussion above regarding a parties’ rights under the APA, *United Coin* once again raises a question about where the threshold lies between complete deprivation of a parties’ right to present a closing argument, which is unconstitutional, and reasonable limitations on a parties’ closing arguments.

The Michigan Supreme Court has held that “discretion” involves “circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome.” *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Accordingly, an “abuse of discretion” occurs “when the trial court chooses an outcome falling outside this

⁷ In one unpublished case, the Michigan Court of Appeals held that a 100-page-limit on a “Standard 4” criminal appellate brief did not violate the appellant’s due process rights. *People v Good*, unpublished per curiam opinion of the Court of Appeals, issued October 15, 2013 (Docket No. 295538), pp 22-23. A “Standard 4” criminal appellate brief is one in which the court permits a criminal appellant to file a brief in addition to the brief filed by the appellant’s legal counsel in order to address issues against the advice of counsel. *Good* is easily distinguishable from the instant case because the court had already granted appellant a motion to extend the page limit on his brief beyond the original 50-page limit, which was already in addition to the 76-page brief filed by appellant’s legal counsel. Furthermore, appellate briefs are unlike electric rate case briefs. The purpose of an appellate brief is to identify and seek redress for errors of law in a trial proceeding. As discussed above, the purpose of an electric rate case brief is to function as the closing arguments after the close of evidentiary record. Whereas an appellate brief would be expected to address relatively few issues of legal error, an electric rate case is expected to address potentially hundreds of issues regarding the conclusions supported by the evidence in the case and the outcome the Commission should approve. More importantly, unlike this case, the court had already agreed to permit a brief longer than the original page limit.

principled range of outcomes.” *Id.* Therefore, like the discussion above regarding the Company’s rights under the APA and what constitutes an arbitrary and capricious decision in violation of the Company’s rights, the threshold is “reasonableness” and some guiding “principle,” which adequately explains the decision.

For all the reasons discussed above, there was no such guiding principle supporting the ALJ’s 30-page limit on reply briefs in this case or his denial of the Company’s motion to file an extended reply brief. Those decisions were not reasonable in light of (i) the long history of typical reply briefs filed by major electric utilities in electric rate cases, (ii) the reasons why electric utilities’ reply briefs are ordinarily much longer than 30 pages, (iii) the number of opposing initial briefs filed and the number of pages of argument contained in those initial briefs, (iv) the nature of the issues raised in the opposing parties’ initial briefs, and (v) the number of new claims and arguments contained in the opposing parties’ initial briefs. Because the ALJ’s decisions were neither reasonable, nor supported by any appropriate principles, they were an abuse of discretion and a violation of the Company’s due process rights. The ALJ’s 30-page limit and his denial of the Company’s motion to extend the length of its reply brief prevented the Company from “present[ing] every available defense” to numerous issues raised for the first time in the other parties’ initial briefs. It also deprived the Company of its right to be heard in a “meaningful manner,” given the number and complexity of the issues at stake in this electric rate case by preventing the Company from “present[ing] claims and rais[ing] relevant issues” in response to new claims and arguments in opposing parties’ initial briefs. Consumers Energy was entitled to more than the ALJ permitted in this case, particularly in light of the absence of any reasonable basis for his decisions or any principles supporting them.

IV. CONCLUSION

For all of the reasons discussed above, Consumers Energy Company requests that the Commission act expeditiously to (i) grant Consumers Energy's Application for Leave to Appeal, (ii) overturn the Administrative Law Judge's decision denying the Company's motion, and (iii) direct the Administrative Law Judge to consider the entirety of Consumers Energy's originally submitted reply brief in this case before rendering the Proposal for Decision.

Respectfully submitted,

CONSUMERS ENERGY COMPANY



Date: January 6, 2026

Gary A. Gensch, Jr. (P66912)
Bret A. Totoraitis (P72654)
Attorneys for Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201
(517) 788-0698

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

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Melissa K. Harris, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on January 6, 2026, she served an electronic copy of **Consumers Energy Company’s Application for Leave to Appeal Ruling on Motion to Exceed Page Limit and Brief in Support** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.



Melissa K. Harris

Subscribed and sworn to before me this 6th day of January 2026.



Crystal L. Chacon, Notary Public
State of Michigan, County of Eaton
My Commission Expires: 05/25/30
Acting in the County of Jackson

ATTACHMENT 1 TO CASE NO. U-21870

Party	Email Address
Administrative Law Judge	
Jonathan F. Thoits	thoitsj@michigan.gov
Counsel for Consumers Energy Company	
Gary A. Gensch, Jr., Esq. Bret A. Totoraitis, Esq. Anne M. Uitvlugt, Esq. Spencer A. Sattler, Esq. Evan B. Keimach, Esq. Mark R. Ruskiewicz, Esq.	gary.genschjr@cmsenergy.com bret.totoraitis@cmsenergy.com anne.uitvlugt@cmsenergy.com spencer.sattler@cmsenergy.com evan.keimach@cmsenergy.com mark.ruskiewicz@cmsenergy.com mpsc.filings@cmsenergy.com
Counsel for the Michigan Public Service Commission Staff	
*Amit B. Singh, Esq. *Michael J. Orris, Esq. *Adam M. Cozort, Esq. *Nicholas Q. Taylor, Esq. *Alena M. Clark, Esq. *Daniel E. Sonneveldt, Esq.	singha9@michigan.gov orrism@michigan.gov cozortal@michigan.gov taylorn10@michigan.gov clarkA55@michigan.gov sonneveldtd@michigan.gov
Michigan Public Service Commission Staff	
*Mike Byrne *Bill Stosik *David Chislea *Bob Nichols *Nick Revere *Lori Mayabb	byrneM@michigan.gov stosikb@michigan.gov chislead@michigan.gov nicholsb1@michigan.gov reveren@michigan.gov mayabb1@michigan.gov
Counsel for Attorney General Dana Nessel	
*Lucas Wollenzien, Esq. *Celeste R. Gill, Esq. *Amanda Churchill	wollenzienl@michigan.gov gille1@michigan.gov AG-ENRA-Spec-Lit@michigan.gov
Consultant for the Attorney General	
*Sebastian Coppola	sebpcoppola@corpalytics.com
Counsel for the Michigan Cable Telecommunications Association (“MCTA”)	
Sean P. Gallagher, Esq. Jon Austin	sgallagher@fraserlawfirm.com jaustin@fraserlawfirm.com
Counsel for the Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan (collectively “MNSC”)	
*Holly L. Hillyer, Esq. *Christopher M. Bzdok, Esq. *Tracy Jane Andrews, Esq. *Natasha Fowles *Tanya Stasio *Jordan Burt *Tyler Comings *Caroline Palmer *Rick Bunch *Julielyn Gibbons *Matt Bandyk *Sean Clark	holly@tropospherelegal.com chris@tropospherelegal.com tjandrews@tropospherelegal.com natasha@tropospherelegal.com tanya.stasio@aeclinic.org jordan.burt@aeclinic.org Tyler.comings@aeclinic.org cpalmer@synapse-energy.com rbunch@5lakesenergy.com jgibbons@5lakesenergy.com mbandyk@synapse-energy.com sean@tropospherelegal.com

* Receives Confidential Materials

ATTACHMENT 1 TO CASE NO. U-21870

Counsel for the Citizens Utility Board of Michigan (“CUB”)	
John Liskey, Esq.	john@liskeypllc.com
Counsel for The Kroger Co. (“Kroger”)	
Kurt J. Boehm, Esq.	kboehm@bkllawfirm.com
Jody Kyler Cohn, Esq.	jkylercohn@bkllawfirm.com
Michael L. Kurtz, Esq.	mkurtz@bkllawfirm.com
Consultant for Kroger	
Justin Bieber	jbieber@energystrat.com
Counsel for Michigan Energy Innovation Business Council (“Michigan EIBC”), Institute for Energy Innovation (“IEI”), Advanced Energy United (“United”), Energy Michigan, Inc., and The Foundry Association of Michigan.	
*Timothy J. Lundgren, Esq.	tjlundgren@varnumlaw.com
Laura A. Chappelle, Esq.	lachappelle@varnumlaw.com
*Justin K. Ooms, Esq.	jkooms@varnumlaw.com
Counsel for The Ecology Center, The Environmental Law & Policy Center (“ELPC”), Union of Concerned Scientists (“USC”), and Vote Solar (Collectively referred to as “CEO”)	
*Daniel Abrams, Esq.	dabrams@elpc.org
*Katie Duckworth, Esq.	kduckworth@elpc.org
*Alondra Estrada	astrada@elpc.org
*Katie Toolan	ktoolan@elpc.org
	mpscdockets@elpc.org
Counsel for Michigan Electric Transmission Company, LLC (“METC”)	
*Richard J. Aaron, Esq.	raaron@dykema.com
*Olivia R.C.A. Flower, Esq.	oflower@dykema.com
*Hannah Buzolits, Esq.	HBuzolits@dykema.com
*Courtney F. Kissel, Esq.	ckissel@dykema.com
	mpscfilings@dykema.com
Counsel for Urban Core Collective (“UCC”)	
*Mark Templeton, Esq.	templeton@uchicago.edu
*Jacob R. Schuhardt, Esq.	jschuhardt@uchicago.edu
*Emma Young	eyoung28@uchicago.edu
*Alexandria Miskho	amiskho@uchicago.edu
*Heidi Peng	hhpeng@lawclinic.uchicago.edu
*Willow Perlick	willowperlick@lawclinic.uchicago.edu
*Aashney Shah	aashney@lawclinic.uchicago.edu
	aelc_mpsc@lawclinic.uchicago.edu
Counsel for the Association of Businesses Advocating Tariff Equity (“ABATE”)	
*Stephen A. Campbell, Esq.	scampbell@clarkhill.com
*Michael J. Pattwell, Esq.	mpattwell@clarkhill.com
*Benjamin J. Holwerda, Esq.	bholwerda@clarkhill.com
Lauren Degnan	ldegnan@clarkhill.com
Consultants for ABATE	
*James Dauphinais	jdauphinais@consultbai.com
*Jessica York	jyork@consultbai.com
*Christina Hildebrandt	childebrandt@consultbai.com
Counsel for Hemlock Semiconductor Operations LLC (“HSC”) and Solar Technology LLC	
*Jennifer Utter Heston, Esq.	jheston@potomacclaw.com
Counsel for Great Lakes Renewable Energy Association (“GLREA”)	
Don L. Keskey, Esq.	donkeskey@publiclawresourcecenter.com
Counsel for Walmart, Inc. (“Walmart”)	
Melissa M. Horne, Esq.	mhorne@hcc-law.com

* Receives Confidential Materials