

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**
(e-file paperless)

**MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
RESPONSE TO CONSUMERS ENERGY COMPANY'S APPLICATION FOR
LEAVE TO APPEAL RULING ON MOTION TO EXCEED PAGE LIMIT**

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

Daniel E. Sonneveldt (P58222)
Alena M. Clark (P73252)
Nicholas Q. Taylor (P81020)
Amit T. Singh (P75492)
Michael J. Orris (P51232)
Adam Cozort (P78363)
Assistant Attorneys General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917
Telephone: (517) 284-8140

DATED: January 14, 2026

On January 6, 2026, Consumers Energy Company (the Company) filed leave to appeal ALJ Thoits's ruling that denied the Company's request for leave to exceed the page limit for its Reply Brief. The mandate limited reply briefs to 30 pages and arises out of a scheduling memorandum that has previously been before the Commission. The Company has alleged its appeal is appropriate for the Commission's immediate consideration, pursuant to Mich Admin Code, R. 10433, for three reasons. First, 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. (Company's App for Appeal, p 4.) Second, 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. (*Id.*) Finally, because ALJ's ruling was not consistent with the Commission's prior rulings that have support parties' rights to raise arguments in reply briefs. (*Id.*)

The Company notes that relevant rules ensure a party's right to raise arguments. (Application, p 6, citing MCL 24.272 and Mich Admin Code, R 792.10434). The Company goes on to argue that the language of the ruling demonstrated an arbitrary and capricious denial of its right to make necessary and proper reply arguments. (*Id.* at 7-11.) The Company correctly notes "[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.” (*Id.* at 9, citing *Wescott v Civil Serv Comm*, 298 Mich App 158, 162; 825 NW2d 674 (2012).)

As Staff pointed out in its appeal of this same scheduling memorandum, parties must be allowed the opportunity to make the arguments they deem appropriate to best serve their client’s interests. (Staff’s App for Appeal, p 24.) In this instance, the issue does not just concern what may be appropriate evidence in the form of testimony, but rather, would arbitrarily prevent a party from including entirely appropriate reply brief material. Reversal of the ALJ’s ruling is again merited because this ruling is yet another inappropriate impediment to a party’s ability to bring the arguments that a party deems appropriate. In Staff’s application for leave to appeal, Staff did not contest the page limit restriction to reply briefs because the scheduling memorandum outlined a process that would protect the parties due process rights by the ability to file a motion and seek leave to exceed the page limit. Now that this process has been attempted to be utilized by one of the parties, and its request has been denied in a manner reasonably described as arbitrary and capricious, Staff supports the Commission’s intervention and reversal of the ALJ’s decision. Given that the ALJ appears to have failed to have provided lawful reasoning that would justify the enforcement of a scheduling memorandum where its provisions prohibit a party from the ability to make—or defend its position—redress from the Commission is timely and necessary.

Therefore, Staff concurs in the position that the Company's application should be immediately considered by the Commission. Furthermore, Staff also concurs in the relief sought, as it supports the reversal of the ALJ's denial of the Company's Motion for the reason that no party should arbitrarily and capriciously have their meaningful ability to make argument prohibited by a scheduling memorandum.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE
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Daniel E. Sonneveldt (P58222)
Alena M. Clark (P73252)
Nicholas Q. Taylor (P81020)
Amit T. Singh (P75492)
Michael J. Orris (P51232)
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Assistant Attorneys General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917
Telephone: (517) 284-8140

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SERVICE LIST - 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 mayabbl@michigan.gov |
| Counsel for Attorney General Dana Nessel | |
| *Lucas Wollenzien, Esq. *Celeste R. Gill, Esq. *Amanda Churchill | wollenzienl@michigan.gov gillc1@michigan.gov AG-ENRA-Spec-Lit@michigan.gov |
| Consultant for the Attorney General | |
| *Sebastian Coppola | sebpcoppola@corp.lytics.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 |
| Counsel for the Citizens Utility Board of Michigan (“CUB”) | |
| John Liskey, Esq. | john@liskeypllc.com |

* Receives Confidential

SERVICE LIST - CASE NO. U-21870

| | |
|--|---|
| Counsel for The Kroger Co. (“Kroger”) | |
| Kurt J. Boehm, Esq. Jody Kyler Cohn, Esq. Michael L. Kurtz, Esq. | kboehm@bklawfirm.com jkylercohn@bklawfirm.com mkurtz@bklawfirm.com |
| Consultant for Kroger | |
| Justin Bieber | jbieber@energystrat.com |
| Counsel for Energy Michigan, Foundry Association of Michigan, 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. Laura A. Chappelle, Esq. *Justin K. Ooms, Esq. | tjlundgren@varnumlaw.com lachappelle@varnumlaw.com 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. *Katie Duckworth, Esq. *Alondra Estrada *Katie Toolan | dabrams@elpc.org kduckworth@elpc.org aestrada@elpc.org ktoolan@elpc.org mpscdockets@elpc.org |
| Counsel for Michigan Electric Transmission Company, LLC (“METC”) | |
| *Richard J. Aaron, Esq. *Olivia R.C.A. Flower, Esq. *Hannah Buzolits, Esq. *Courtney F. Kissel, Esq. | raaron@dykema.com oflower@dykema.com HBuzolits@dykema.com ckissel@dykema.com mpscfilings@dykema.com |
| Counsel for Urban Core Collective (“UCC”) | |
| *Mark Templeton, Esq. *Jacob R. Schuhardt, Esq. *Emma Young *Alexandria Miskho *Heidi Peng *Willow Perlick *Aashney Shah | templeton@uchicago.edu jschuhardt@uchicago.edu eyoung28@uchicago.edu amiskho@uchicago.edu hhpeng@lawclinic.uchicago.edu willowperlick@lawclinic.uchicago.edu aashney@lawclinic.uchicago.edu aelc_mpsc@lawclinic.uchicago.edu |
| Counsel for the Association of Businesses Advocating Tariff Equity (“ABATE”) | |
| *Stephen A. Campbell, Esq. *Michael J. Pattwell, Esq. *Benjamin J. Holwerda, Esq. Lauren Degnan | scampbell@clarkhill.com mpattwell@clarkhill.com bholwerda@clarkhill.com ldegnan@clarkhill.com |
| Consultants for ABATE | |
| *James Dauphinais *Jessica York *Christina Hildebrandt | jdauphinais@consultbai.com jyork@consultbai.com childrebrandt@consultbai.com |
| Counsel for Hemlock Semiconductor Operations LLC (“HSC”) and Solar Technology LLC | |
| *Jennifer Utter Heston, Esq. | jheston@potomaclaw.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