THE UNIVERSITY OF CHICAGO
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Law Clinic

February 17, 2026

Via E-Filing

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

RE: MPSC Case No. U-21870

Dear Ms. Felice:

Please find enclosed the Exceptions to the Proposal for Decision on Behalf of Urban Core Collective, along with proof of service for electronic filing in the above-referenced matter.

Please do not hesitate to contact my office with any questions or comments.

Sincerely,

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xc: Parties to Case No. U-21870

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates for generation and distribution of electricity and for other relief.	Case No. U-21870 ALJ Jonathan F. Thoits

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EXCEPTIONS OF URBAN CORE COLLECTIVE

February 17, 2026

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I. INTRODUCTION

Urban Core Collective ("UCC") files this Exceptions Brief to the Proposal for Decision (PFD) in this case, U-21870. UCC maintains the positions advanced in its Initial Brief, filed on December 5, 2025, and its Corrected Reply Brief, filed on December 23, 2025, and now addresses the specific recommendations made in the PFD. Generally, UCC takes issue with the fact that the PFD does not address or explain its reasoning in light of UCC's evidence for many of UCC's issues, and it either summarizes UCC's position but fails to factor UCC's arguments into its analysis or it declines to mention UCC's position altogether. UCC addresses the PFD's recommendations below.

First, under Michigan law, the Commission must consider affordability when reviewing rate increase requests and also must consider UCC's evidence regarding the unaffordability of Consumers' rates for a significant percentage of its customers. Because the PFD fails to discuss affordability sufficiently in its analysis of assistance programs and is silent regarding the Commission's legal obligation to consider affordability, when issuing its determinations the Commission should first consider UCC's evidence and provide clear reasoning and analysis. Similarly, the PFD does not analyze UCC's argument that the Company's potential adoption of a Percentage of Income Payment Plan (PIPP) assistance program would offer significant benefits to low- and moderate-income (LMI) customers who are facing unaffordable rates and extremely high energy burdens in issuing its determination. The Commission cannot adopt the PFD's recommendations without additional reasoning and consideration of UCC's arguments, and in doing so, should order the Company to develop and implement a permanent PIPP program. The Commission must also consider UCC's evidence and request that the Company perform a regular affordability analysis, about which the PFD also does not provide a recommendation.

Second, the Commission should decline to allow Consumers to recover for its corporate membership dues and should disallow the Company from recovering for dues that fund political advocacy contrary to ratepayers' interests. UCC supports the PFD's recommendation that the Company provide more detailed information about corporate membership expenditures and agrees that the Commission should adopt this recommendation to increase transparency. However, the PFD failed to sufficiently consider UCC's evidence and arguments regarding the disallowance of corporate memberships in this rate case. Consumers has failed to demonstrate tangible, specific benefits to ratepayers that would make recovery of these memberships just and reasonable. Further, Consumers' recovery of membership dues for organizations that fund political advocacy contrary to ratepayers' interests would be unjust and unreasonable and would independently violate the First Amendment. Thus, in order to comply with the law, the Commission must consider UCC's evidence regarding corporate membership dues and should deny Consumers' request to recover corporate membership dues in this case.

Third, the Commission must consider UCC's arguments about the reliability of Consumers' service. The Commission should affirm the PFD's recommendation that the Commission order Consumers to "run additional regression analyses for . . . SAIDI with and without MEDs; SAIFI with and without MEDs; [and] CAIDI with and without MEDs"[1] and should consider UCC's evidence in doing so. While the PFD omits UCC's evidence of disproportionate impact of poor reliability on low-income communities as well as UCC's evidence regarding outage credits, the Commission must consider UCC's evidence under Michigan law and should order the Company to notify customers of their right to receive outage credits, explain how outage credits

[1] PFD at 893.

are calculated and applied, and revisit the amount paid as outage credits in light of customers' incurred costs.

Fourth, the Commission should require Consumers to mitigate harms caused by the demonstrated racial disparities in shutoffs. Although the PFD acknowledges that the Company's regression analysis has found that minority households are statistically more likely to experience disconnections in service,[2] it merely recommends that the Company revisit its disconnection policies in its next rate case, issues no recommendations to address the ongoing harm to Black, Indigenous, and People of Color (BIPOC) customers, and ignores UCC's arguments that the Commission should order the Company to take mitigation measures in this case. The Commission should order the Company to implement a shutoff moratorium, and implement a compensation fund for past and ongoing harms, until the root cause of the racial disparity in disconnections is identified and addressed.

Fifth, the Commission must consider UCC's evidence and arguments regarding environmental justice (EJ) communities and cannot adopt the PFD's recommendations without additional reasoning. The Commission should order Consumers to improve its analysis when the results of the regression analysis that the Commission ordered in MPSC Case No. U-21585 reveal conflicting data. The PFD summarized UCC's position on this issue but did not issue a recommendation. The Commission should adopt the PFD's recommendation that the Commission require the Company to provide more information regarding the Vulnerable Communities Resiliency Plan (VCRP). Additionally, the Commission should order Consumers to upgrade the grid to promote distributed energy recourse (DER) deployment into EJ communities and should consider the potential benefits of DERs to EJ communities when making this determination. The

[2] *Id.* at 954.

PFD failed to make a recommendation regarding UCC's request on this issue and completely ignored UCC's arguments regarding community solar, a type of DER. The Commission should also order Consumers to improve their protection of customers during extreme weather by creating an interim extreme heat protection program and restricting shutoffs during extreme weather, and it should also require the Company to ensure that its Geographic Information System (GIS) data is meaningfully accessible to the public.

Sixth, the Commission should order the Company to effectuate more transparency and accountability for the Investment Recovery Mechanism (IRM). The Commission should require reporting on equity impacts in rate cases, including this one, as well as reconciliation cases, and should factor in the lessons it learned from the IRM reconciliation process in determining whether to approve the IRM request in this case. Additionally, UCC supports the PFD's recommendation that the IRM be extended by one year instead of two.

Finally, the Commission must consider all of UCC's evidence and arguments regarding the Company's community engagement activities. The Commission must consider UCC's argument that the Commission should require the Company to report quarterly on benefits delivered to customers and costs incurred to deliver those benefits, UCC's evidence related to Analytics and Outreach and Digital Customer Operations expenses for the test year, and UCC's arguments about coordination and outreach with EJ organizations. Because the PFD's recommendation that Consumers merely adjust its color and font size on its handouts does not sufficiently respond to UCC's evidence,[3] the Commission cannot affirm the PFD's recommendations without considering UCC's evidence and supplying additional reasoning.

[3] *Id.* at 935.

II. LEGAL STANDARD

The Commission's review of the PFD and order in this case must adhere to the Michigan State Constitution and Michigan law. The Commission is bound by Article VI, § 28 of the Michigan Constitution, which sets the standard of review for courts assessing challenged Commission actions.[4] Further, the Commission's review and order must comply with the requirements of Michigan administrative law, as set forth in the Michigan Administrative Procedures Act.[5]

Under the Michigan Constitution, Commission orders must be supported by "competent, material and substantial evidence on the whole record."[6] This is a demanding evidentiary burden. Michigan case law has defined "substantial evidence" as meaning "evidence that a reasonable person would accept as sufficient to support a conclusion."[7] This constitutional provision applies to MPSC orders.[8]

Michigan courts must set aside agency orders or decisions that are procedurally deficient and cause material prejudice to a party or are unsupported by evidence.[9] MCL § 24.306(1)(c) states that "the 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 . . . [m]ade upon unlawful procedure resulting in material prejudice to a party" or "[n]ot supported by competent,

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[4] MICH. CONST. art. 6, § 28.
[5] MCL § 24.201 et seq.
[6] MICH. CONST. art. 6, § 28.
[7] *Dowerk v. Charter Twp. of Oxford,* 233 Mich. App. 62, 72 (1998).
[8] *See Att'y Gen. v. Mich. Pub. Serv. Comm'n*, 206 Mich. App. 290, 294 (1994) (stating that "a final agency shall be reviewed to determine whether it is authorized by law and, in cases where a hearing is required, whether it is supported by competent, material, and substantial evidence on the whole record" and that "[t]he same standard of review applies to a final order of the PSC"). Some courts have also held that Article 6 § 28's requirement that agency decisions be "authorized by law" is conterminous with the requirements under Sections 24.306(1)(c), (d), and (e) of the MAPA. *See Nw. Nat'l Cas. Co. v. Comm'r of Ins.*, 231 Mich. App. 483, 488 (1998) (stating that the court's "interpretation [of the Michigan Constitution] is almost identical to the standards set out in the Administrative Procedures Act (APA)").
[9] MCL § 24.306(1)(c)–(d).

material and substantial evidence on the whole record."[10] Additionally, under Michigan case law, an agency determination that lacks sufficient evidence gives rise to material prejudice, as does a proceeding in which the conducting officer limits a party's rights to respond.[11]

A proposal for decision is procedurally deficient if it fails to specify the facts considered or found necessary in determining its recommendations, as Section 81 of the MAPA states that the "proposal for decision shall contain a statement of the reasons therefor and of each issue of fact and law necessary to the proposed decision[.]"[12] Similarly, Michigan courts have determined that Section 85 of the MAPA requires that "an agency's finding of fact must provide a precise statement of the evidence which supports its ruling and the conclusions of law in order to facilitate appellate review."[13] Thus, a Commission order lacking "precise statement[s]" of facts supporting its decisions would also be procedurally deficient.

Further, under Michigan law, a court will reverse an agency decision if that decision is "arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion."[14] Michigan case law has established that an agency decision "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."[15]

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[10] MCL § 24.306(1)(c)–(d).

[11] *See Campbell v. Marquette Prison Warden*, 119 Mich. App. 377, 384 (1982) (explaining that material prejudice under MCL § 24.306 requires unlawful procedure and insufficient "evidence upon which to base the decision"); *Tocco v. Marquette Prison Warden*, 123 Mich. App. 395, 401 (1983) (finding that a hearing officer's failure to provide a party with a report limited their ability to "anticipate and prepare rebuttal to [the] allegations" in the report, and therefore resulted in material prejudice).

[12] MCL § 24.281(2).

[13] *Butcher v. Dep't of Nat. Res.*, 158 Mich. App. 704, 707 (1987).

[14] MCL § 24.306(1)(e).

[15] *Kelly v. Parole Bd.*, 2017 WL 3316951, at *13 (Mich. Ct. App. Aug. 3, 2017) (quoting *Wescott v. Civil Serv. Comm.*, 298 Mich. App. 158, 162 (2012)) (setting out arbitrary and capricious standard); *see also SBC Mich. v. Mich. Pub. Serv. Comm'n*, 2005 WL 1106559, at *5 (Mich. Ct. App. May 10, 2005) (finding MPSC action to be arbitrary, capricious, and unreasonable action).

Finally, MCL § 462.26(8) states that the standard of review for Commission orders is whether "the order of the commission complained of is unlawful or unreasonable."[16] Michigan courts have held that "[a] decision of the PSC is unlawful if it involves an erroneous interpretation or application of the law" and that a decision by the MPSC "is unreasonable if it is unsupported by the evidence."[17]

III. ARGUMENT

A. The Commission Must Act on Affordability in This Rate Case.

1. Michigan Law Requires the Commission to Assess Affordability in Rate Cases.

As UCC discussed extensively in its initial and reply briefs,[18] Michigan law requires the Commission to consider affordability when reviewing rate increase requests in utility rate cases. Under Michigan law, the Commission must set rates that are "just and reasonable"[19] and perform a "balancing of investor and consumer interests."[20] The Commission must undertake a "comprehensive examination of all factors involved,"[21] including "cost" and "value of service to the Consumer."[22] Furthermore, "affordability of rates is a core consumer interest[,]"[23] and the Commission cannot consider cost without discussing affordability. Affordability and cost are conceptually intertwined, as evidenced in the Commission's own definition of energy affordability: "the extent to which a household has the resources to meet their home energy needs

[16] MCL § 462.26(8).
[17] *Detroit Edison Co. v. Mich. Pub. Serv. Comm'n*, 261 Mich. App. 448, 451 (2004).
[18] *See* UCC Initial Brief at 45–62; UCC Corrected Reply Brief at 6–10.
[19] MCL § 460.557(4).
[20] *Ass'n of Bus. Advocating Tariff Equity v. Pub. Serv. Comm'n*, 208 Mich. App. 248, 267; see *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (interpreting a similar requirement on a similar state statute); see also *City of Detroit v. Mich. Pub. Serv. Comm'n*, 308 Mich. 706, 716 (1944).
[21] UCC Initial Brief at 46–47 (citing *Twp. of Meridian v. City of E. Lansing*, Mich., 342 Mich. 734, 749 (1955)).
[22] *Id.* at 46–47 (citing MCL § 460.577(2)).
[23] *See id.* at 53.

. . . without compromising a household's ability to meet other basic needs."[24] Additionally, as UCC explained in its initial brief and as explained further in subsection 3.iii below, if the Commission failed to consider UCC's affordability evidence, the Commission's order would be arbitrary and capricious for failing to show that the record before the Commission supports its decision and for "engaging in the rate-making process without the support of a fully 'reasoned opinion' or 'substantial evidence.'"[25]

2. Consumers' Customers are Experiencing a Worsening Affordability Crisis, and Consumers' Existing Affordability Programs are Inadequate.

Customers in Consumers' service territory already struggle to afford their energy bills due to a worsening affordability crisis. According to Company Witness Byrom, "LMI [(low- and moderate-income)] customers account for more than 1 of every 3 customers in Consumers Energy's service territory; 11% are low income, meaning they are in crisis and unable to pay their energy bill; 26% are moderate income, commonly identified as being one crisis away from being able to pay their energy bill."[26] Consumers identified 28% of Michigan households as "struggle[ing] to afford basic necessities like housing, childcare, food, transportation, health care, and technology."[27] Consumers' customers spend significant proportions of their household budgets to afford their energy bills.[28] For example, Witness Wiliams recounted that her usual monthly energy bill from Consumers costs $200 to $350, about 38% of her income.[29] This percentage is over six times the generally accepted percentage of income, 6%, that experts consider

[24] *Id.* at 47 (citing *In re MPSC*, MPSC Case No. U-20757, Order (Dec. 21, 2023), at 36.); UCC Corrected Reply Brief at 6 (citing MCL § 24.285 (stating that "[e]ach conclusion of law shall be supported by authority or reasoned opinion.")).
[25] *See id.* at 53–55 (citations omitted).
[26] *See id.* at 18 (citing Byrom direct Testimony at 3 TR 967.28–29).
[27] *Id.*at 15 (citing Ex. UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 79, 89.).
[28] *Id.* at 14–15.
[29] *Id.* at 15 (citing Williams Direct Testimony at 3 TR 2380–81).

affordable to spend on energy bills.[30] By the Commission's own definition of affordability, Consumers' customers' energy bills are unaffordable.[31] But, as recounted by Witness Williams, "[h]igh energy prices and constant rate increases force families to choose between basic needs" in Consumers' service territory.[32]

As described in UCC's initial brief, Consumers' current bill assistance programs do not sufficiently help customers to afford their bills.[33] Consumers' current three bill assistance programs (the Low-Income Assistance ("LIA") credit, the Residential Income Assistance ("RIA") credit, and the Consumers Affordable Resource for Energy ("CARE") Program) are inadequate,[34] complex,[35] and difficult to navigate.[36] Additionally, because these programs merely provide limited assistance instead of addressing the root problem that ratepayers are being forced to spend excessively high proportions of their household budgets on energy bills, the programs do not "address[ ] the fundamental unaffordability of energy."[37]

In the face of the worsening affordability crisis and inadequacy of the Company's existing programs, the Commission should order Consumers' Energy to implement a Percentage of Income Payment Plan (PIPP) program in *this* case, about which UCC has provided ample evidence in its

[30] *Id.* (citing Ex. UCC-5, APPLIED PUB. POL'Y RSCH. INST. FOR STUDY AND EVALUATION (APPRISE), RATEPAYER-FUNDED LOW-INCOME ENERGY PROGRAMS: PERFORMANCE AND POSSIBILITIES (2007), at 8).
[31] *Id.* at 17.
[32] *Id*. (citing Williams Direct Testimony at 3 TR 2374).
[33] *Id.* at 20–31.
[34] *See id.* at 21–23 (describing how these programs are insufficient, as the LIA credit has such limited availability that only 3.9% of Consumers' 135,000 customers eligible for this support actually receive a LIA credit, the RIA credit is small and does not increase proportionally to rate increases, and the CARE MB program features income brackets that "appear[ ] to perpetuate excessive energy burdens rather than reducing or eliminating them").
[35] *See id.* at 24–27 (describing how customers enrolled in multiple assistance programs can be left worse off than they would be if they were only enrolled in one program).
[36] *See id.* at 29–31 (featuring Witness Williams stating that Consumers customers' often lack information about these assistance programs and recounting the difficulties in signing up for these programs).
[37] *See id.* at 30.

initial and corrected reply briefs.[38] The PFD's recommendation that "no action be taken on UCC's PIPP recommendation until the Commission has taken action in relation to Staff's report in Case No. U-20757" is incomplete.[39] If the Commission does not take action in Case No. U-20757 this month as requested in Staff's Affordability report,[40] then the Commission should order a PIPP program in *this* case instead of using the separate docket's existence as an excuse to further delay proper consideration of a PIPP program.

In deciding to defer adoption of a PIPP program to MPSC Case No. U-20757, the PFD did not address UCC's arguments. Regarding UCC's stance that the Commission should order a PIPP program, the PFD quite comprehensively recites UCC's arguments about the benefits of PIPP programs and the necessity of instating a PIPP program in this case.[41] However, as justification for its recommendation that "no action be taken on UCC's PIPP recommendation until the Commission has taken action in relation to Staff's report in Case No. U-20757," the PFD merely gestures toward the Staff report's indication that the Commission is supposed to act this month in Case No. U-20757 and this is "likely to have a direct bearing on the question of PIPP adoption."[42] In each of its relevant recommendations, it either parrots UCC's arguments and then fails to

[38] UCC Corrected Reply Brief at 4–10; UCC Initial Brief at 32–41. For example, data from Consumers' pilot PIPP program shows that the pilot program outperformed Consumers' current bill assistance programs as customers enrolled in the pilot program had bills that were aligned with the Commission's definition of energy affordability, on-time payments from the lowest-income customers in the pilot increased, and customers had higher satisfaction with the pilot than with CARE MB. *See id.* at 32–34. A PIPP program would significantly help to combat the affordability crisis and thus should be ordered by the Commission.

[39] PFD at 942.

[40] The MPSC Staff Energy Affordability Report includes recommendations regarding the Commission's consideration of the PIPP program, including that "the Commission provide clear guidance on next steps by, ideally, February 2026." Ex. UCC-202, MPSC STAFF, ENERGY AFFORDABILITY REPORT (2025), at 248. MPSC Staff Witness Braunschweig also noted in her rebuttal testimony that "Staff recommends the Commission take a consistent approach and align its decisions with the Staff report as it addresses the intervenor recommendations in the instant case." Braunschweig Rebuttal Testimony at 6 TR 4612.

[41] PFD at 938–42.

[42] *Id.* at 942.

analyze them in the context of its final recommendations, or omits UCC's arguments entirely. The PFD is thus procedurally deficient under Michigan law, as described in Section II above.

3. The Commission Cannot Adopt the PFD Without Additional Reasoning and Consideration of Affordability Issues and Consideration of a PIPP Program.

In its initial and corrected reply briefs, UCC provided ample evidence[43] establishing that there is an affordability crisis in Consumers' service territory that will be worsened if the Commission approves the requested rate increase in this case; yet, the PFD failed to meaningfully recognize or address the unaffordability of Consumers' bills for its residential ratepayers. Though the PFD recounts some of the evidence from Witnesses Cira-Reyes' and Williams' testimony presented in UCC's briefs, the PFD does not even once refer the evidence provided regarding the inability of a significant portion of customers to be able to pay their bills, particularly LMI customers, when stating its recommendations or the reasoning for those recommendations.

i. The PFD's Recommendations on Affordability Are Not Supported by Substantial Evidence on the Whole Record.

The Commission must consider UCC's evidence on affordability and provide additional reasoning in issuing its order. As stated above, the Michigan Constitution requires Commission orders to be supported by "competent, material and substantial evidence on the whole record."[44] In UCC's initial brief, UCC provided extensive evidence—including from the Company itself—that Consumers' customers already struggle to afford their energy bills and face high energy burdens relative to the rest of the country.[45]

The Commission must consider UCC's evidence on the unaffordability of Consumers' bills for the Company's residential ratepayers when making its decision. Every time the Commission

[43] *See* UCC Initial Brief at 13–31; UCC Corrected Reply Brief at 1–10.
[44] MICH. CONST. art. 6, § 28.
[45] *See* UCC Initial Brief at 14–19.

approves a rate increase, it has a compounding effect on the affordability crisis. The difficulties ratepayers face in paying their energy bills are a vital component of "the whole record."[46] As a result, if the Commission fails to consider the well-established unaffordability of Consumers' bills for the Company's residential ratepayers in its analysis, the Commission would violate the Michigan Constitution because the ruling would ignore an important part of the "whole record." Because of this, such an order would not be supported by "competent, material and substantial evidence on the whole record."[47]

ii. Because the PFD Lacks Substantial Evidence, a Court could Set Aside an Order Adopting the PFD's Recommendations for Causing UCC Material Prejudice.

The Commission must provide more analysis and consideration of UCC's evidence than the PFD did. Under MCL § 24.306(1)(c), Michigan courts must set aside agency orders that cause material prejudice to a party by being procedurally deficient or are unsupported by evidence.[48] As explained above, a proposal for decision is procedurally deficient under Section 81 of the MAPA if it lacks "a statement of the reasons therefor and of each issue of fact and law necessary to the proposed decision" and under Section 85 of the MAPA if it lacks "a precise statement of the evidence which supports its ruling and the conclusions of law in order to facilitate appellate review."[49] A Commission order adopting such a PFD's recommendations without additional analysis and evidence would thus be unlawful.

The PFD in this case does not adequately address UCC's arguments and evidence when issuing its recommendations. Although the PFD summarizes UCC's witness testimony and briefs, it does not provide sufficient reasoning about the issues of law and fact in UCC's arguments about

[46] MICH. CONST. art. 6, § 28.
[47] *Id.*
[48] MCL § 24.306(1)(c)–(d).
[49] MCL § 24.281(2); *Butcher v. Dep't of Nat. Res.*, 158 Mich. App. 704, 707 (1987) (citing MCL § 24.285).

the affordability crisis that are implicated in the PFD's recommendations. The PFD lacks sufficient analysis to support its ruling or its conclusions of law, thereby hindering appellate review. While the PFD recounts some of UCC Witnesses Cira-Reyes's and Williams's testimonies,[50] it says nothing addressing the overall affordability arguments in its determinations.

As a result of its procedural deficiency, the PFD causes UCC material prejudice and thus cannot be adopted by the Commission without additional reasoning. The PFD causes UCC material prejudice because it lacks sufficient evidence[51] and thus limits UCC's ability to respond.[52] While the PFD acknowledges that the Commission must set rates that are "just and reasonable,"[53] the PFD says nothing about UCC's argument that, in order to set rates that are "just and reasonable," the Commission must consider affordability because unaffordable rates cannot be "reasonable."[54] Regarding UCC's argument in its initial brief that it would be "arbitrary and capricious" for the Commission to fail to consider UCC's affordability evidence on the record,[55] the PFD is silent. The PFD is similarly silent with respect to UCC's argument that it would be unlawful for the Commission to approve a rate increase in this case without assessing affordability.[56] Finally, regarding UCC's argument that the Commission should not wait for the EAAC, the PFD acknowledges UCC's stance that affordability should be considered in this case

[50] PFD at 929–30 (recounting the UCC witnesses' statements about the insufficiency of current bill assistance programs and Consumers' customers having high energy burdens).
[51] See *Campbell v. Marquette Prison Warden*, 119 Mich. App. 377, 384 (1982) (explaining that material prejudice under MCL § 24.306 requires unlawful procedure and insufficient "evidence upon which to base the decision").
[52] *See Tocco v. Marquette Prison Warden*, 123 Mich. App. 395, 401 (1983) (finding that a hearing officer's failure to provide a party with a report limited their ability to "anticipate or prepare rebuttal to [the] allegations" in the report, and therefore resulted in material prejudice).
[53] PFD at 9.
[54] *See* UCC Initial Brief at 46–53.
[55] *See id.* at 53–55.
[56] *See id.* at 57–59.

instead of through Case No. U-20757,[57] but the PFD expresses no viewpoint with respect to UCC's arguments and articulates no conclusion or recommendation regarding affordability being considered in this case.

Due to the PFD's procedural deficiency in not responding to UCC's evidence and arguments about the affordability crisis, the PFD causes material prejudice to UCC. Thus, the Commission cannot adopt the PFD's recommendations as they stand and must fully consider UCC's evidence.

iii. Without Additional Reasoning, the Commission's Adoption of the PFD's Recommendations Would be Arbitrary and Capricious Under Michigan Law.

If the Commission adopts the PFD's recommendations without additional reasoning related to UCC's arguments on the affordability crisis, the resulting order would be arbitrary and capricious. Under Michigan law, an agency decision "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."[58] Because the PFD ignores the affordability-related circumstances in this case, the PFD "reflects an absence of consideration or adjustment with reference to principles, circumstances, or significance."[59] As described above, the PFD failed to consider sufficiently the evidence about affordability presented by UCC in issuing its recommendations. The Commission must consider this evidence in its order to comply with Michigan law.

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[57] PFD at 942.

[58] *Kelly v. Parole Board*, 2017 WL 3316951, at *13 (Mich. Ct. App. Aug. 3, 2017) (quoting *Wescott v. Civil Serv. Comm.*, 298 Mich. App. 158, 162 (2012)) (setting out arbitrary and capricious standard); *see also SBC Mich v. Mich. Pub. Serv. Comm'n*, 2005 WL 1106559, at *5 (Mich. Ct. App. May 10, 2005) (finding Michigan Public Service Commission action to be arbitrary, capricious, and unreasonable action).

[59] *Id*.

A failure to order a PIPP program would also be arbitrary and capricious without further examination of UCC's evidence that could provide sufficient support for such a Commission order. For example, the PFD acknowledged that UCC described how "the PIPP program outperformed the Company's current assistance programs[.]"[60] However, the PFD fails to include the striking fact that "[o]n average, customers with income between 20% and 75% of the FPL on the CARE MB program paid nearly four times the monthly energy bill that customers in the same income range paid in the PIPP pilot."[61] Furthermore, the PFD does not include as evidence in its final determination an analysis of the shortcomings of Consumers' primary Affordable Payment Program (APP), the CARE Modified Budget (CARE MB) program, including its use of income tiers that "perpetuate excessive energy burdens," as well as the numerous described benefits of the PIPP program, notably that it offers rates to customers in line with the Commission's own definition of affordability.[62] The Commission must consider all of UCC's evidence presented on the record, and should ensure that its order appropriately analyzes and responds to the evidence provided.

iv. If the Commission Does Not Consider UCC's Evidence, Its Order Will Be "Unlawful or Unreasonable" Under MCL § 462.26(8).

The Commission must consider the evidence presented by UCC on the affordability crisis, the PIPP program, and the legal requirement to consider affordability in this case. As described above, MCL § 462.26(8) states that the standard of review for Commission orders is whether "the order of the commission complained of is unlawful or unreasonable."[63] Given that a decision by

[60] PFD at 941.
[61] See UCC Initial Brief at 32 (citing Cira-Reyes Direct Testimony, at 3 TR 2320 n. 129 (citing UCC-38, CONSUMERS ENERGY CO., CONSUMERS ENERGY PIPP PILOT PROGRAM (PERCENTAGE OF INCOME PAYMENT PLAN) (2025), at 196, 198)).
[62] *See id.* at 22–23, 27–28, 32–34.
[63] MCL § 462.26(8).

the MPSC "is unreasonable if it is unsupported by the evidence[,]"[64] a Commission order that adopts the PFD's recommendations without additional analysis would be unreasonable because the PFD is not supported by the evidence on the affordability analysis presented by UCC in this case.

As discussed above, the PFD's recommendations are unsupported by the evidence. Regarding the affordability crisis, the PFD recites some of UCC Witnesses Cira-Reyes's and Williams's testimony,[65] but this witness testimony contradicts the PFD's findings regarding affordability. When it comes to the PIPP program, the PFD similarly recounted some of UCC's evidence for why the Commission should order the Company to implement a PIPP program, but that evidence does not support the PFD's recommendation that no action be taken regarding the PIPP program. Finally, regarding UCC's evidence showing that the Commission has a legal obligation to consider affordability, the PFD was entirely silent. Therefore, the PFD's determinations did not adequately engage with UCC's evidence. If the Commission adopted them, the Commission's order would be unsupported by the evidence and thus "unreasonable" under MCL § 462.26(8).

4. The Commission Should Order the Company to Perform a Regular Affordability Analysis.

As UCC argued in its initial brief, the Commission should require the Company to regularly perform an affordability analysis in accordance with the definition of affordability the Commission provided in Case No. U-20757.[66] While the PFD mentions UCC's request for an affordability

[64] *Detroit Edison Co. v. Michigan Pub. Serv. Comm'n*, 261 Mich. App. 448, 451–52 (2004).
[65] PFD at 929–31 (recounting the UCC witnesses' statements about the insufficiency of current bill assistance programs and Consumers' customers having high energy burdens).
[66] UCC Initial Brief at 43 (citing *In re MPSC*, MPSC Case No. U-20757, Order (Dec. 21, 2023), at 36).

analysis and Consumers' reply,[67] the PFD does not provide a recommendation regarding this request. Under Michigan law, the Commission must consider the evidence provided[68] and should order Consumers to regularly conduct an affordability analysis in order to assess the impacts of the Company's proposed rate increases.

5. UCC Supports the PFD's ROE Determination.

UCC supports the PFD's recommendation that the Commission adopt a return on equity (ROE) of 8.2%.[69] In its initial brief, UCC advocated for the Commission to approve a ROE that is as low as possible because doing so would help to make rates more affordable for customers and because the requested ROE would provide the Company with an undue benefit given its failure to charge affordable rates.[70] UCC agrees with other parties' reasoning in support of a lower ROE.[71] Because the PFD's proposed ROE would help to make rates more affordable and for the other reasons offered by other parties and the PFD, UCC recommends that the Commission accept the ALJ's proposal.

B. The Commission Should Disallow All of the Corporate Membership Dues Sought by Consumers and in the Alternative, at a Minimum, Should Disallow Recovery for Dues that Fund Political Advocacy Contrary to Ratepayers' Interests.

The Commission should disallow all corporate membership dues sought by Consumers. As UCC thoroughly briefed, the Company has failed to provide evidence that recovery for corporate memberships is just and reasonable[72] because it has failed to show that ratepayers receive

[67] PFD at 929, 934.
[68] MCL § 462.26(8); *Detroit Edison Co. v. Michigan Pub. Serv. Comm'n*, 261 Mich. App. 448, 451–52 (2004).
[69] PFD at 542.
[70] UCC Initial Brief at 42.
[71] *See, e.g.,* Megginson Direct Testimony, 6 TR 4539–41 (for Staff); Bandyk Direct Testimony, 6 TR 3952 (for CUB); Lyon Direct Testimony, 3 TR 2606, 2608–09 (for Walmart).
[72] *See* UCC Initial Brief at 121–22 (explaining that "[a]n electric utility seeking a rate increase must include sufficient evidence in its initial application to demonstrate that its rates are 'just and

tangible, specific benefits from any of the Company's corporate memberships.[73] In fact, some of the organizations that the Company funds, including the Electric Edison Institute (EEI), engage in activities that are contrary to ratepayers' interests.[74] For organizations engaging in such kinds of activities, allowing the Company to recover for its corporate membership fees in this case would be unjust and unreasonable and would violate the U.S. Constitution's First Amendment prohibitions on compelled speech.[75]

1. The Commission Should Adopt the PFD's Recommendation that Consumers Provide More Information About Corporate Membership Expenditures.

The Commission should adopt the PFD's recommendation that "the Commission direct Consumers to provide a detailed and itemized list of expenditures, with names of vendors and a detailed description of the nature of the expenses, of Consumers spending on electoral campaigns, advertising, marketing, lobbying, trade associations and 501(c)(3) and 501(c)(4) non-profits."[76] The PFD also recommends that "the Commission direct the Company to turn its Working Paper into an Exhibit."[77] UCC agrees with these recommendations. As UCC noted in its initial brief, "Consumers' Application lacks the transparency, specificity, and substantiation necessary to

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reasonable,'" and further explaining that the "evidence provided by an electric utility [to show reasonability of recovered costs] must [ ] be 'competent, material, and substantial' to warrant Commission approval").

[73] *See id.* at 125–26 (explaining that "[i]n a previous Commission order related to recovery of discretionary corporate membership expenses of another utility, DTE Electric, the Commission ordered that 'DTE Electric shall provide in its next general rate case a detailed description of how [corporate membership] organizations *specifically* impact/benefit customers . . . '" and arguing that "[p]resumably, the Commission believed that this information would provide the 'substantial evidence,'. . . , required by state law to justify continued recovery of DTE's discretionary memberships").

[74] *See id.* at 133.

[75] U.S. CONST. amend. I; *Gitlow v. People of N.Y.*, 268 U.S. 652, 666 (1925) (holding that the Fourteenth Amendment incorporates the First Amendment's freedom of speech protections against state governments); *see also Buckley v. Valeo*, 424 U.S. 1, 19 (1976) (holding that the First Amendment protects political spending "because virtually every means of communicating ideas in today's mass society requires the expenditure of money").

[76] PFD at 716.

[77] *Id.*

support recovery of corporate membership fees from ratepayers."[78] Insofar as the PFD's disclosure requirements work toward greater transparency, UCC supports them.

2. The Commission Should Disallow Recovery for Consumers' Corporate Memberships in This Rate Case.

The PFD did not properly consider UCC's evidence and argument regarding the disallowance of corporate memberships, as required of the Commission under Michigan law and the Michigan Constitution. The Commission should disallow recovery for Consumers' corporate memberships in this case, as the Company has failed to show that recovery is just and reasonable.[79] Specifically, the Company has not met its evidentiary burden to provide "competent, material, and substantial" evidence of reasonableness for the recovered costs passed on to customers through the Company's rates.[80] The Company has not provided evidence, in this rate case, of tangible, specific benefits of these memberships to ratepayers,[81] and many of these organizations, including the Electric Edison Institute (EEI), fund advocacy contrary to ratepayers' interests.[82]

[78] UCC Initial Brief at 122.
[79] *See id.* at 121–22.
[80] MCL § 24.285; MICH. CONST. 1963, art. 6, § 28, cl. 2; *see also Dowerk v. Charter Twp. of Oxford,* 233 Mich. App. 62, 72 (1998) (defining "substantial evidence" as "evidence that a reasonable person would accept as sufficient to support a conclusion").
[81] As described in UCC's initial brief, "[i]n a previous Commission order related to recovery of discretionary corporate membership expenses of another utility, DTE Electric, the Commission ordered that 'DTE Electric shall provide in its next general rate case a detailed description of how [corporate membership] organizations *specifically* impact/benefit customers . . . ,'" and arguing that "[p]resumably, the Commission believed that this information would provide the 'substantial evidence,'. . . , required by state law to justify continued recovery of DTE's discretionary memberships"). UCC Initial Brief at 125–26.
[82] This issue is discussed extensively in UCC's initial brief and corrected reply brief. *See, e.g., id.* at 127–44*;* UCC Corrected Reply Brief at 21–30.

i. The Commission Must Consider UCC's Arguments About Consumers' Lack of Specific Tangible Benefits of Corporate Memberships.

Consumers failed to provide tangible benefits of Consumers' corporate memberships to ratepayers, as described in detail in UCC's initial brief and corrected reply brief.[83] UCC provided extensive detail in its briefing on the purported benefits offered by the Company, and why the Company's "benefits" fall far short of offering clear, tangible benefits to *ratepayers*.[84] Thus, Consumers has not shown "sufficient, concrete benefits to ratepayers which would justify recovering costs from ratepayers,"[85] and "Consumers has not provided 'substantial evidence' to prove that recovery for its corporate memberships is reasonable."[86] The PFD "finds that while Consumers has provided some general evidence of benefits to ratepaying customers and has excluded obviously disallowed lobbying-related expenses from its recovery, the Company could do more to correlate membership fees directly with benefits to ratepayers and justify the expense."[87] However, the PFD has not offered an explanation or analysis that addresses UCC's presented evidence in issuing its determination that Consumers has provided "some general evidence of benefits to ratepaying customers . . . ."[88] In order to comply with Michigan law and the Michigan Constitution, the Commission must fully consider UCC's arguments and evidence

[83] *See* UCC Initial Brief at 126–29; *see also* UCC Corrected Reply Brief at 24 (noting that "[i]n subsequent discovery and rebuttal testimony, the Company's offered lists of benefits were neither tangible nor detailed enough to warrant recovery from ratepayers").
[84] *See* UCC Initial Brief at 125–31.
[85] UCC Initial Brief at 125; UCC Corrected Reply Brief at 23.
[86] UCC Initial Brief at 126.
[87] PFD at 716.
[88] *Id.* In fact, the PFD cites the Commission's order in case U-21297, in which the Commission rejected DTE's showing of general evidence of benefits to ratepayers, agreed that "DTE Electric could have more effectively responded to the Staff's and intervenors' requests for more information about the customer impact/benefit of these memberships," and ordered that "DTE Electric shall provide in its next general rate case a detailed description of how these organizations *specifically* impact/benefit customers." *See In re: Application of DTE Electric Company for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority*, MPSC Case No. U-21297, Order (Dec. 1, 2023) at 221.

in issuing its ruling. As explained in Section II above, Michigan law requires that Commission orders are supported by "competent, material and substantial evidence on the whole record,"[89] that orders do not cause prejudice to UCC,[90] and that orders do not result in an arbitrary and capricious ruling for a failure to consider evidence presented in the record.[91] The Commission must fully consider UCC's detailed arguments and evidence regarding the purported benefits presented by the Company in this rate case in issuing its ruling. If the Commission were to do so, it would find recovery unreasonable because Consumers has not offered any concrete, tangible benefits of these memberships to ratepayers, despite multiple opportunities to do so in testimony and briefing.

ii. The Commission is Legally Required to Consider UCC's Arguments About Barring Recovery for Membership Dues that Fund Political Advocacy.

Second, the Commission cannot allow Consumers to recover membership dues that fund political advocacy that can undermine ratepayers' interests. As described in detail in UCC's briefing, doing so would not be just and reasonable[92] and would violate the U.S. Constitution's First Amendment prohibitions on compelled speech.[93]

The PFD failed to consider properly UCC's extensive evidence that corporate membership dues, especially for EEI, which can be directed towards political advocacy, fund causes that are

[89] MICH. CONST., art. 6, § 28.
[90] MCL § 24.306(1)(c).
[91] *Kelly v. Parole Bd.*, 2017 WL 3316951, at *13 (Mich. Ct. App. Aug. 3, 2017) (quoting *Wescott v. Civil Serv. Comm.*, 298 Mich. App. 158, 162 (2012)) (setting out arbitrary and capricious standard).
[92] *See* UCC Initial Brief at 10 (explaining that under the just and reasonable standard "the Commission must 'balance investor and public interests' in determining just and reasonable rates"). For a full discussion of the just and reasonable standard, *see* UCC Initial Brief at 9–12. For a discussion of the just and reasonable standard as applied to the Company's Corporate Membership Dues, *see* UCC Initial Brief at 132 (noting that "the Company has failed to provide sufficient evidence to prove that it has not included any expenses associated with advocacy, lobbying, or activities that undermine the interests of ratepayers in its request for recovery").
[93] *See id.* at 133–36; UCC Corrected Reply Brief at 26–30.

contrary to ratepayers' interests.[94] In its briefing, UCC provided detailed evidence of lobbying and political advocacy, including EEI's well-documented efforts to engage in such activities, which are contrary to ratepayers' interests.[95] As described in Section II above, the Commission is required to consider the whole record, including these arguments, when it issues an order.[96] The PFD fails to address directly in its recommendations UCC's concerns about recovery in this rate case for Consumers' corporate membership fees. Because the PFD does not fully consider UCC's evidence and argumentation, it "reflects an absence of consideration or adjustment with reference to principles, circumstances, or significance" and is arbitrary and capricious under Michigan law.[97] While UCC agrees with the PFD's recommendation, as described above, that Consumers provide a detailed and itemized list of expenditures,[98] the PFD fails to offer a recommendation on Consumers' recovery of corporate membership fees in this rate case. The Commission must consider this evidence, and as described extensively in UCC's briefing, should disallow "the entire $830,705 in corporate membership dues sought by Consumers Energy. At a minimum, the Commission should disallow all costs associated with EEI membership, or limit EEI recovery to a maximum of $15,000 for the documented mutual assistance program."[99]

[94] *See* UCC Initial Brief at 133 (noting "EEI's well-documented and widespread engagement in a multitude of activities dedicated to shaping policy outcomes that prioritize the financial interests of member companies over ratepayer needs"); *see also* UCC Corrected Reply Brief at 25–26.
[95] UCC Initial Brief at 135–36.
[96] MICH. CONST. art. 6, § 28.
[97] *Kelly v. Parole Bd.*, 2017 WL 3316951, at *13 (Mich. Ct. App. Aug. 3, 2017) (quoting *Wescott v. Civil Serv. Comm.*, 298 Mich. App. 158, 162 (2012)) (setting out arbitrary and capricious standard); *see also SBC Michigan*, 2005 WL 1106559 (finding MPSC action to be arbitrary, capricious, and unreasonable action).
[98] PFD at 716.
[99] UCC Corrected Reply Brief at 30. The mutual assistance program is a benefit offered by EEI to the Company. It is described as a "nationwide mutual assistance network that enables the Company to quickly mobilize resources for storm restoration." UCC Initial Brief at 130.

Furthermore, the Commission has an independent obligation to comply with the First Amendment of the U.S. Constitution, including the prohibition on compelled speech, which Consumers violates by collecting membership dues involuntarily from ratepayers. As UCC explained at length in its briefs, "[t]he Commission should not allow Consumers to recover membership dues that fund political advocacy that can undermine ratepayers' interests" because doing so "forc[es] ratepayers to subsidize anti-ratepayer advocacy [and therefore] violates First Amendment requirements regarding compelled speech."[100] In its initial brief and corrected reply brief, UCC described the functional monopoly on service in Consumers' territory and the harm of forcing ratepayers to fund advocacy contrary to their interests.[101]

Consumers' attempts to dismiss compelled speech concerns are unpersuasive and irrelevant. In its reply brief, the Company argues that the "Commission has no inherent or common law powers . . . [and therefore] cannot issue a declaratory ruling as to the constitutional issues discussed by UCC."[102]

Contrary to the Company's assertions, the Commission has an independent obligation to comply with the U.S. Constitution, including the First Amendment, which was made applicable to the states by the Fourteenth Amendment.[103] UCC is not asking the Commission to issue

[100] UCC Corrected Reply Brief at 26–30. *See also* UCC Initial Brief at 132–42. Controlling case law clearly establishes that forcing individuals to subsidize advocacy with which they may disagree is unconstitutional. *Id.* at 133.

[101] *Id.* at 135 (noting that "[c]ustomers are effectively compelled to make payments to an entity (Consumers) that uses those payments to fund advocacy with which they may disagree"); *see also* UCC Corrected Reply Brief at 29 (explaining that "EEI has an extensive history of advocacy against ratepayers' interests").

[102] Consumes Energy Supplemental Reply Brief at 20.

[103] See *Gitlow v. People of State of New York*, 268 U.S. 652, 666 (1925) (holding that the First Amendment applies to the states as incorporated through the Fourteenth Amendment's Due Process clause). *See also* UCC Initial Brief at 133 (citing *Gitlow*, 268 U.S. 652 at 666).

"declaratory relief." Consumers' assertion to that effect has no bearing on whether or not the U.S. Constitution binds the Commission.

Furthermore, the Commission clearly abides by constitutional requirements, as even its standards for regulating public utilities are based in the U.S. Constitution. As UCC explained in its initial brief, "both the U.S. Supreme Court and the Supreme Court of Michigan have established that state public utility commissions have significant discretion in setting rates";[104] however, as the U.S. Supreme Court has established, the discretion of state utilities in setting rates must comply with the Fifth Amendment's Takings Clause, as incorporated to the states through the Fourteenth Amendment.[105] The U.S. Constitution does not bind the Commission only when the Commission is setting rates.[106] Like the Commission's standards for establishing just and reasonable rates must comply with the Fifth Amendment's Takings Clause, as applied through the Fourteenth Amendment, the Commission's standards for rate increases and reasonability of recovered costs must comply with the First Amendment.

While the PFD does not address the First Amendment issue that UCC raises, the Commission must do so. The Commission must consider UCC's evidence regarding corporate

[104] *See* UCC Initial Brief at 10–11 (citing the U.S. Supreme Court's decision in *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989); *Ass'n of Businesses Advocating Tariff Equity v. Pub. Serv. Comm'n*, 208 Mich. App. 248 (Mich. Ct. App. 1994)).

[105] *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989) (finding that "[i]f the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments").

[106] For example, as the PFD in this case notes, the Commission's standards for establishing a fair rate of return for public utilities "are established as a matter of constitutional law." *See* PFD at 454. The PFD cites the Supreme Court's decisions in *Bluefield Water Works Co. v. Public Service Commission of West Virginia,* 262 U.S. 679 (1923) and *Federal Power Comm. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) for the Commission's standards for establishing a fair rate of return. PFD at 452. *See also Duquesne*, 488 U.S. at 315 (quoting *Hope*, 320 U.S. at 602 for the proposition that when a rate is "subject to constitutional attack . . . '[i]t is not theory, but the impact of the rate order which counts'" and *Bluefield*, 262 U.S. at 692–93 for the proposition that in evaluating the impact of a rate "'[r]eturn to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks'").

memberships that fund political advocacy that is contrary to ratepayer interests, as described above, and must address the arguments and concerns provided by UCC regarding the First Amendment's prohibition on compelled speech.

C. The Commission Must Consider UCC's Arguments and Requests Regarding the Reliability of Consumers' Service.

Consumers' poor reliability harms the Company's customers[107] and disproportionately harms vulnerable EJ communities.[108] As described in detail in UCC's initial brief, customers do not have sufficiently reliable service—an independent audit found that "Consumers was in the fourth quartile of utility companies for average outage duration[,]" and UCC witnesses described regularly hearing from low-income and BIPOC customers who have experienced service outages.[109] UCC described in detail the impact that outages can have on vulnerable communities, including affecting the ability to meet medical needs, burdening low-income customers with the expense of replacing necessities, and resulting in unsafe home temperatures.[110] To address these concerns, Consumers should take additional proactive steps to improve service reliability, and the Commission should require the Company to do so.

First, the Commission should affirm the PFD's recommendation that "the Commission direct the Company to run additional regression analyses for . . . SAIDI with and without MEDs; SAIFI with and without MEDs; [and] CAIDI with and without MEDs . . . ."[111] The Commission

[107] UCC Initial Brief at 63–67; UCC Corrected Reply Brief at 11 (stating that "overall, the Company's reliability performance . . . ranks 'near the bottom' when 'compared [to] its peer utilities over the last five years.").
[108] UCC Corrected Reply Brief at 10.
[109] UCC Initial Brief at 63–64.
[110] *Id.* at 64.
[111] PFD at 893.

should do so despite the fact that the PFD does not discuss UCC's position on this matter.[112] In its corrected reply brief, UCC notes that when regression analysis was performed using SAIDI data *with* MEDs, that analysis showed "that EJ tracts experienced worse reliability compared to similarly situated non-EJ tracts."[113] UCC therefore requests that the Commission require the Company to include and focus on the SAIDI with and without MEDs metrics, which illuminate disparities between EJ and non-EJ communities.[114] The Commission should, in doing so, consider the evidence presented by UCC in issuing its order, as is required by Michigan law and the Michigan Constitution.[115]

Second, the Commission must consider UCC's extensive evidence of the disproportionate impact of poor reliability on low-income communities compared to wealthier communities, even when both communities have equally reliable energy, and assess the reliability regression analysis in this context. Service outages can be life-threatening for customers with medical needs[116] and deprive them of basic necessities such as food or safe living temperatures, imposing substantial financial costs on those least able to afford them.[117] The PFD omits UCC's evidence from its discussion entirely, which, as discussed in Section II above, is required under Michigan law.[118] Commission orders must be supported by "substantial evidence on the whole record"[119] and must

[112] *See* UCC Corrected Reply Brief at 10–12 (recommending that the Company focus on the right metrics, such as SAIDI with MEDs, in their analyses).
[113] *Id.* at 12.
[114] *Id.*
[115] *See* MICH. CONST., art. 6, § 28; MCL § 24.306(1)(c)–(d).
[116] UCC Initial Brief at 64.
[117] *Id.* at 65–66.
[118] As described in Section II, Commission orders must be supported by "competent, material, and substantial evidence on the whole record." MICH. CONST., art. 6, § 28.
[119] MICH CONST., art. 6, § 28.

not cause material prejudice to a party.[120] The Commission must consider UCC's evidence when evaluating reliability issues in this rate case, lest its order cause UCC material prejudice and not be supported by the whole record.

Finally, the Commission must consider UCC's evidence and requests regarding outage credits.[121] In its initial brief, UCC details the shortcomings of the current outage credit program and offers recommendations for improving the Company's outage credit program.[122] The PFD entirely omitted UCC's arguments regarding outage credits. Under the Michigan Constitution, the Commission is required to consider the "whole record" and must therefore consider UCC's evidence and arguments when issuing its ruling.[123] The Commission should consider UCC's evidence and order the Company to (1) proactively notify customers of their right to receive outage credits; (2) provide customers with an explanation of how outage credits are calculated and applied, and (3) revisit the amount paid as outage credits, in light of the actual incurred costs of customers.

D. The Commission Should Require the Company to Mitigate the Harm of the Company's Demonstrated Racial Disparities in Shutoffs.

As described by UCC in past briefing,[124] racial disparities in Consumers' shutoff rates are unjust and unreasonable.[125] The Company's own regression analysis, conducted pursuant to the

[120] MCL § 24.306(1)(c) states that "the 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 . . . [m]ade upon unlawful procedure resulting in material prejudice to a party."
[121] UCC Initial Brief at 63–67 (discussing community witness Williams' direct testimony, which illustrates the lack of information provided to Consumers' customers about the existence of outage credits and how outage credits are applied to customer bills, and the inadequacy of the size of outage credits in comparison with the much larger costs incurred by customers with each outage).
[122] *Id.* at 65–67.
[123] MICH. CONST., art. 6, § 28.
[124] UCC Initial Brief at 68–71; UCC Corrected Reply Brief at 13–15.
[125] MCL § 460.557(4) (requiring that rates of electric utilities be "just and reasonable" and that "a consumer shall not be charged more or less than other consumers are charged for like

Commission's order in Case No. U-21585, has revealed a pattern, unexplained by other factors, of racial disparities in residential shutoff rates "even when [p]ercentage [b]elow [p]overty and [u]nemployment [r]ate are included in the model."[126] Although the Company has known about these disparities since September 2024 and said it would complete an assessment of these results by September 2025, the Company has been unable to identify the root causes that lead to racially disparate shutoffs, even after extending its assessment deadline to December 31, 2025.[127]

BIPOC (Black, Indigenous, and People of Color) customers have already experienced unjust and unreasonable shutoffs.[128] Customers cannot be charged the same rates but receive different services due solely to arbitrary racial differences without violating the "just and reasonable" standard.[129] Thus, UCC requests that the Commission impose a moratorium on Consumers' residential shutoffs until the Company completes its assessment of the issue and implements a plan to explain and redress the disparate racial impact moving forward.[130]

The PFD acknowledges that the "statistically significant result showing that minority households are more likely to experience disconnection is quite concerning"[131] and that ". . . something else is clearly occurring that appears to result in racial bias in the disconnection process."[132] Despite this acknowledgement, the PFD says that it is not persuaded "by the calls for a moratorium on residential disconnections from CEO and UCC" and that the "PFD agrees that a disconnection moratorium could result in large arrearage balances, putting low-income customers

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contemporaneous service rendered under similar circumstances and conditions."); UCC Initial Brief at 68.

[126] *Id.*

[127] UCC Corrected Reply Brief at 15; UCC Initial Brief at 70.

[128] *See* UCC Corrected Reply Brief at 15; *See also* MCL § 460.557

[129] MCL § 460.557; UCC Initial Brief at 69.

[130] *Id.* at 70–71.

[131] PFD at 954.

[132] *Id*.

who are already struggling in an even worse position."[133] Ultimately, the PFD recommends only that the Commission "consider directing the Company to reevaluate its disconnection policies in its next rate case"[134] and directs the Company to revisit the regression analysis "to evaluate how the pilot and countermeasures impacted disparity in disconnections."[135]

While UCC supports and encourages reevaluation of the Company's disconnection practices, it is not sufficient to wait until the next rate case. UCC requests that the Commission require the Company to "act with greater speed."[136] As described above, racially disparate outcomes in Consumers' shutoffs cannot be considered just and reasonable.[137] The PFD offers no recommendations to prevent and redress the ongoing harm suffered by BIPOC customers, who have and may continue to experience months of unreasonable and unjust shutoffs.

In its corrected reply brief, UCC directly addresses the PFD's comment "that a disconnection moratorium could result in large arrearage balances."[138] UCC notes that the Company does not explain why a temporary shutoff moratorium would render balances unaffordable or prevent customers from receiving funding assistance.[139] UCC argued that if the Company is concerned about unpaid balances due to a shutoff moratorium, the Commission should order the Company to, within its statutory power, take additional measures to address secondary impacts, such as forgiving arrears.[140] The PFD does not consider or take these arguments into account; in fact, the PFD does not directly address them at all.

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[133] *Id.* at 954–55.
[134] *Id.* at 893. The PFD offered this recommendation in light of Witness Tan's recommendation that Consumers re-evaluate its disconnection policies. *Id.* at 891–92.
[135] *Id.* at 955.
[136] UCC Initial Brief at 69.
[137] MCL § 460.557; UCC Initial Brief at 69.
[138] PFD at 955.
[139] UCC Corrected Reply Brief at 14.
[140] UCC Initial Brief at 71 ("If the Company is concerned about unpaid balances due to a shutoff moratorium, it could and should take additional measures, such as implementing a payment plan that

The Commission must address the PFD's deficiencies and fully consider the evidence and arguments provided by UCC. As described in Section II above, the Commission must support its decision with "substantial evidence on the whole record."[141] The Commission should thus consider UCC's suggested remediation measures in ordering a time-limited shutoff moratorium while the Company continues to investigate the racial disparity.[142] The PFD's recommendation does not offer any meaningful path to provide relief to customers who are already experiencing unjust and unreasonable shutoffs, and the Commission should not hesitate to act now.

Lastly, the Commission should order the Company to create a compensation fund for customers improperly impacted by the racial disparities in Consumers' shutoff practices, as described in UCC Witness Cira-Reyes' Direct Testimony.[143] A compensation fund would redress past harm to customers who were discriminated against by the Company's unjust and unreasonable shutoff practices.[144] The PFD acknowledges this request[145] but does not rule on it. The Commission should consider UCC's request for a compensation fund and should order the Company to implement one in this case.

E. The PFD Fails to Address Adequately UCC's Arguments Regarding Environmental Justice Communities, and, Where the PFD Does Acknowledge UCC's Arguments, the PFD often Fails to Support Its Ruling.

The PFD fails to consider and rule on many of UCC's arguments regarding environmental justice issues, and when it does rule, it often fails to provide adequate support for its determination.

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forgives arrears, to address these potential secondary impacts. If the Company is concerned about impacts to its own financial health, the Commission ultimately allows the Company to charge uncollected bills to the rate base, so the Company would not suffer financially over the long term.").

[141] MICH. CONST., art. 6, § 28.
[142] UCC Initial Brief at 70.
[143] Cira-Reyes Direct Testimony at 3 TR 2330.
[144] MCL § 460.557.
[145] PFD at 886.

As described by Section II above, Commission orders must be supported by "competent, material and substantial evidence on the whole record."[146] The Commission must provide adequate reasoning by making a "precise statement of the evidence" to support each of its decisions.[147] Furthermore, a decision is "unreasonable if it is unsupported by the evidence."[148] Michigan law states that a court shall set aside an order if it is made upon "unlawful procedure resulting in material prejudice to a party."[149] Finally, an agency decision is arbitrary and capricious if it "lacks an adequate determining principle, when it reflects an absence of consideration or adjustment with reference to principles . . . ."[150]

1. The PFD Does Not Address UCC's Criticism of a Lack of Like-Versus-Like Analysis in the Company's Reliability Regression Analysis.

As described extensively in UCC's initial brief, the Commission should require the Company to improve its analysis when the results of the regression analysis ordered by the Commission in U-21585 reveals disparities or contradictory claims and data.[151] The Company's analysis comparing reliability in urban environmental justice (EJ) communities and non-EJ communities does not include a proper like-versus-like analysis that compares EJ communities to

[146] MICH. CONST., art. 6, § 28.
[147] *Butcher v. Dep't of Nat. Res.*, 158 Mich. App. 704, 707 (1987) (interpreting § 85 of the MAPA).
[148] *Detroit Edison Co. v. Mich. Pub. Serv. Comm'n*, 261 Mich. App. 448, 451–52 (2004).
[149] MCL § 24.306(1)(c).
[150] *Kelly v. Parole Board*, 2017 WL 3316951, at *13 (Mich. Ct. App. Aug. 3, 2017) (quoting *Wescott v. Civil Serv. Comm'n*, 298 Mich. App. 158, 162 (2012)) (setting out arbitrary and capricious standard); *see also SBC Mich. v. Mich. Pub. Serv. Comm'n*, 2005 WL 1106559, at *5 (finding Michigan Public Service Commission action to be "capricious, arbitrary, and unreasonable action").
[151] UCC Initial Brief at 75.

similarly situated EJ communities, i.e., urban to urban and rural to rural.[152] While the PFD summarizes UCC's position,[153] it does not issue a recommendation on this request.

The Commission must offer a ruling on the evidence provided by UCC to ensure compliance with Michigan law. The Commission's order, described above, must be based on "substantial evidence on the whole record."[154] A failure to consider UCC's arguments would amount to a failure to consider the whole record. Furthermore, omitting discussion of UCC's presented evidence would cause material prejudice to UCC and, when reflecting an "absence of consideration," would be arbitrary and capricious.[155] The Commission should consider UCC's evidence and order the Company to supplement its analysis with like-versus-like comparison and otherwise improve the analysis where the analysis contains contradictory results.

2. The Commission Should Affirm the PFD's Recommendation Regarding Increased Information on the Vulnerable Communities Resiliency Plan (VCRP) and Should Rule on UCC's Remaining Request for an Accelerated VRCP Investment Schedule.

As described in detail in UCC's initial brief, while UCC supports the VCRP, UCC believes Consumers needs to provide more information regarding its VCRP to allow for "meaningful stakeholder engagement and Commission oversight."[156] UCC requests that the Commission require the Company to provide more information on its VCRP, including "specific investments

[152] *See* UCC Initial Brief at 73–75.
[153] PFD at 911.
[154] MICH. CONST., art. 6, § 28.
[155] *Kelly,* 2017 WL 3316951 at *13 (quoting *Wescott*, 298 Mich. App. at 162) (setting out arbitrary and capricious standard).
[156] UCC Initial Brief at 76.

as currently intended, an accelerated timeline relative to current planning, and performance metrics."[157]

UCC agrees with the PFD's recommendation that the Commission provide more detailed information regarding the VCRP and requests that the Commission consider UCC's further request for an accelerated VCRP investment schedule.[158] Although the PFD does not explicitly rule on UCC's evidence, the PFD does make a favorable ruling on a similar request made by the Clean Energy Organizations (CEO), ultimately recommending that the Commission require the Company "to provide more detail about how the funding for the VCRP will be allocated over the 10-year horizon, including annual budgets and project priorities, the need for a clear approach for tracking and reporting the plan's impacts, including how EJ circuits will be reassessed over time and how progress will be measured."[159] UCC supports this ruling and requests that the Commission affirm the PFD's recommendation, alongside the aforementioned consideration and discussion of the evidence UCC has provided on this issue.[160]

3. The PFD Does Not Address UCC's Arguments Regarding Deployment of Distributed Energy Resources (DERs) in EJ Communities Including with Respect to Community Solar.

The Commission should require the Company to upgrade the grid to facilitate DER deployment in EJ communities and should consider the benefits of community solar and other DERs to EJ communities when making this determination.[161] As described in detail in UCC's initial brief, DERs can bring extensive benefits to residential customers and EJ communities in

[157] *Id.* at 77.
[158] *Id.* at 76–77.
[159] PFD at 182–83.
[160] UCC Initial Brief at 75–77.
[161] *Id.* at 77–83.

particular,[162] and the Commission should order the Company to upgrade its grid to ensure that DERs, including community solar, are deployed in EJ communities.[163] Community solar, a particular type of DER, greatly increases energy reliability and affordability, and has the capacity to generate wealth, social connection, and autonomy to those who would likely be unable to afford solar arrays on their personal residences.[164]

Despite the evidence provided by UCC on the record in this case, the PFD does not issue a recommendation on UCC's requests to require the Company to ensure that EJ communities have adequate hosting capacity for DERs, and it does not mention community solar whatsoever, even in its summary of UCC's arguments. As described by Section II above, the Commission must offer a ruling on the evidence and requests provided by UCC to ensure compliance with Michigan law and the Michigan Constitution, which require that an order be supported by "substantial evidence on the whole record,"[165] not cause material prejudice to UCC,[166] or result in an arbitrary and capricious ruling for a failure to consider evidence presented in the record.[167] The PFD notes that the Company agrees that, in the future, it will study the reliability and DER hosting capacity in EJ communities.[168] But the Commission should order more, requiring the Company to support the

[162] *Id.* at 78–80 (benefits include increased energy resiliency, lower electricity bills, community ownership, opportunities for household participation in energy markets, and support to communities that are disproportionately affected by outages).
[163] *Id.* at 80–82.
[164] *Id.* at 79–80.
[165] MICH. CONST., art. 6, § 28.
[166] MCL § 24.306(1)(c).
[167] *Kelly,* 2017 WL 3316951 at *13 (quoting *Wescott*, 298 Mich. App. at 162) (setting out arbitrary and capricious standard).
[168] PFD at 884.

deployment of DERs in EJ communities, and the Commission should scrutinize closely the Company's community solar efforts in other MPSC cases, including U-21972.[169]

4. The PFD Does Not Adequately Address the Need for an Interim Extreme Weather Policy.

The Commission should require Consumers to better protect customers during extreme weather events by creating an interim extreme heat protection program and restricting shutoffs surrounding extreme weather events while the Commission considers extreme weather policies in MPSC Case No. U-20140.[170] In its initial brief, UCC provides extensive evidence in support of the need for such an interim extreme weather policy,[171] and offers specific recommendations for the contents of this policy.[172] Extreme weather is becoming more frequent and severe and can expose customers to dangerous temperatures, which can seriously impact health and safety, harming low-income and BIPOC customers more than others.[173] The Commission is required to ensure that utility service "promote[s] safe and adequate service to the public and [ ] provide[s]

[169] UCC Initial Brief at 77 ("While the details of the Company's latest specific proposal are being litigated in Case No. U-21972, it is nonetheless important for the Commission to bear in mind the impacts and lost opportunities for reliability and affordability due to the Company's insufficient community solar policies and programs to date.").

[170] *Id.* at 84–95.

[171] *Id.*

[172] UCC requested that "The Commission orders Consumers to adopt the following minimum extreme heat policies: a. Consumers should be prohibited from disconnecting residential service when either: (1) the forecasted temperature will reach 90°F or above in the service area, or (2) the NWS issues a heat advisory, excessive heat watch, or excessive heat warning for the service area, which considers a variety of factors, including an elevated heat index and local preparedness. b. Second, disconnections should be, at a minimum, restricted at least 24 hours before and after extreme heat events, and these restrictions should be extended to weekends and holidays. The Commission should also consider policies which (1) address affordability issues simultaneously, such as providing customers the option to be on a payment plan that limits energy burdens to six percent or less, and (2) require utilities to make reasonable efforts to reconnect individuals who have been disconnected for nonpayment. c. Third, disconnections during the summer months of June, July, August, and September should be disallowed. Should the Commission choose to wait until further action is taken in Case No. U-20140, the Commission should order an interim moratorium on disconnections during the hot summer months of June, July, August, and September." *Id.* at 94–95.

[173] *Id.* at 87–90.

standards for uniform and reasonable practices . . . by utilities."[174] Since current extreme weather policies and customer assistance programs do not adequately protect customers from the harms of extreme weather,[175] the Commission must create a workable interim policy to keep customers safe until there is a decision in MPSC Case No. U-20140.

Despite this evidence, the PFD recommends that extreme weather policy considerations be confined solely to MPSC Case No. U-20140, and it made this recommendation without responding to UCC's extensive evidence provided in its initial brief.[176] The Commission must consider UCC's evidence in issuing its order and should order the Company to institute specific protections, outlined in detail in UCC's initial brief, for customers during extreme heat events in the present case.[177]

5. The Commission Should Take Action to Ensure that GIS Data is Accessible to the Public.

The Commission should adopt the PFD's recommendation to improve public-facing GIS data,[178] while also ordering the Company to implement side-by-side comparisons of reliability across circuits.[179] In its initial brief, UCC requested that the Commission require the Company to improve upon its GIS data map to comply with the Commission's order in MPSC Case No. U-21389 by "(1) includ[ing] a clear key explaining all acronyms and data categories; (2) add[ing] intuitive and navigable map controls; and (3) implement[ing] functionality that allows side-by-

[174] MICH. ADMIN. CODE r. 460.101(2) (2017); UCC Initial Brief at 85.
[175] UCC Initial Brief at 88–89 ("For example, the Company's Winter Protection program helps to prevent shutoffs during the cold months, and the Company states that it automatically enrolls customers receiving the 'Home Heating Credit' into this program. However, other eligible customers are not automatically enrolled and often do not know the program exists. . . . Notably, at the same time, a similar protection program also does not exist for the warmer months.").
[176] PFD at 938.
[177] *See supra* note 172 detailing the request from UCC Initial Brief at 94–95.
[178] PDF at 896.
[179] UCC Initial Brief at 98.

side comparison of reliability performance across circuits."[180] UCC agrees with the PFD's recommendation that the Commission should require the Company to improve its GIS data map with "a clear key explaining all acronyms and data categories and intuitive and navigable map controls."[181] The Commission should affirm this recommendation.

However, the PFD failed to offer a recommendation on UCC's request to require the Company to implement side-by-side comparisons of reliability across circuits. As described in UCC's initial brief, this comparison is useful for viewers to understand and verify the Company's relative reliability performance among circuits.[182] Without this feature, the map does not adequately serve its purpose to provide "functional public access" to its data because viewers cannot easily spot disparities between circuits.[183] As described in Section II and above, the Commission must offer a ruling on the evidence provided by UCC to ensure compliance with Michigan law and the Michigan Constitution. Although the PFD did not address side-by-side data comparison, the Commission must do so and should order the Company to implement this measure.

F. The Commission Should Ensure Transparency and Accountability for the Investment Recovery Mechanism (IRM).

1. The Commission Should Require Improved Reporting from Consumers on the IRM.

UCC supports the PFD's recommendation that "the Commission require Consumers to report more thoroughly on the linkage between its investments in EJ communities and the need in those communities."[184] The Company's IRM equity reporting must comply with the metrics

[180] *Id.* at 98; *see also id.* at 95–99.
[181] PDF at 896.
[182] UCC Initial Brief at 97.
[183] *Id.*
[184] PFD at 867.

specified by the Commission in Case U-21389.[185] In that case, the Commission ordered Consumers to provide evidence on whether the Company's IRM investments are "being deployed equitably, whether the investments exacerbate or perpetuate racial or socioeconomic disparities in service, whether there has been a positive impact on reliability and resilience, whether there is sufficient opportunity for scrutiny of the investments, and whether customers have benefitted from the IRM mechanism."[186] UCC agrees with the PFD that the Company's current reporting falls short of the Commission's requirements in U-21389[187] and is insufficient for discerning the relationship between investments and community needs.[188]

The Commission should require reporting on equity impacts in rate cases such as this one, as well as in the reconciliation cases. The PFD recommends that the Commission require more thorough equity reporting in the "next rate case *or* direct that equity outcomes be specifically addressed in the IRM reconciliation cases."[189] However, the Commission must look at equity reporting in *both* kinds of cases. Equity reporting is necessary in reconciliation cases to determine whether IRM funds, especially funds designated to the VCRP, are being used equitably and accountably in ways that protect and benefit ratepayers.[190] Equity reporting is necessary in rate cases to determine whether the Company is likely to execute successfully on the new IRM proposals that the Company puts forward in the rate cases. Thus, equity reporting is necessary in both kinds of cases.

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[185] *See* UCC Initial Brief at 104–07.
[186] MPSC Case No. U-21389 Order at 273 (Mar. 1, 2024).
[187] PFD at 867 ("[T]his PFD finds that equity outcomes do not appear to be discussed in the IRM reconciliation cases.").
[188] Consumer's reporting on equity outcomes only describes the percentage of EJ communities in the Company's service territory relative to the percentage of the Company's IRM investments. A more appropriate approach assesses the Company's investments in EJ communities relative to the needs of those EJ communities. *See* UCC Initial Brief at 106–07.
[189] PFD at 867 (emphasis added).
[190] UCC Corrected Reply Brief at 16–17.

Finally, the Commission should require that Consumers report quarterly on equity outcomes, project completion rates, and spending versus budget. Contrary to the PFD's findings and Consumers' reply brief argument, it is inconsequential that UCC recommends quarterly reporting specifically in its initial brief and not in its testimony. The PFD correctly notes that UCC's argument about the need for better reporting on equity outcomes "was introduced in UCC witness Cira-Reyes's direct testimony."[191] The same is true of UCC's recommendation that the Company report regularly on project completion rates and spending versus budget. Just as with equity reporting, UCC Witness Cira-Reyes identified the need for more explanation about the Company's projects and spending in his initial testimony.[192] UCC's initial brief was merely putting additional, clarifying specificity to UCC Witness Cira-Reyes' recommendations. Even if UCC had not made these points in initial testimony, UCC could have raised them in its initial brief. Michigan's Administrative Hearing Rules only preclude raising new factual and legal issues in reply briefs, not initial briefs.[193] As UCC established in its initial brief, transparency and accountability are essential across the entire IRM,[194] and quarterly reporting will help to ensure that both transparency and accountability are achieved.[195]

2. The Commission Should Use the IRM Reconciliation Process to Inform Decision-Making in This Rate Case and Future Rate Cases.

The Commission must account for what it learned in the IRM reconciliation process in deciding whether to approve the IRM request in this case. The PFD states that it "agrees [with

[191] PFD at 867.
[192] *See* Cira-Reyes Direct Testimony at 3 TR 2332 (noting that "Consumers should elaborate on why its Year 1 cost projections were so inaccurate.").
[193] *See* MICH. ADMIN. CODE R. 792.10434(3) (2023) ("Any factual or legal issue that is not addressed in a party's initial brief shall not be addressed by that party in a reply brief, except in response to another party's brief.").
[194] *See* UCC Initial Brief at 102 (explaining that "[t]he Commission's rationale for approving the IRM in U-21585 was based on the principles of accountability and transparency").
[195] *See id.* at 104 (quoting Cira-Reyes Direct Testimony at 2 TR 1809).

UCC] that the Commission should use Case No. U-21918 and subsequent reconciliation cases to inform its decision-making regarding Consumers' current and future IRM proposals," but does not make a recommendation in this regard, noting that Staff and other parties can obtain information from these cases and present it to the Commission for consideration."[196] UCC disagrees with the PFD's deliberate omission of a specific recommendation on this point; the Commission should adopt the position that it will consider the current reconciliation case U-21918 and subsequent reconciliation cases in deciding whether to extend current and future IRM proposals. As UCC argued in its initial brief, by tracking information in the reconciliation process, the Commission can better understand how issues in the reconciliation case interact with the issues in this case.[197]

Furthermore, the Commission should factor current and future reconciliation cases into its rate-case analysis, whether or not information about reconciliation is presented by Staff and other parties. Just because Staff and other parties can obtain information from current and future reconciliation cases and present it to the Commission does not mean that the Commission cannot consider information that is before it from the same party, i.e., the Company, in another proceeding that bears on the same issues.

3. UCC Supports the PFD's Recommendation That the IRM Be Extended by One Year.

The PFD recommends that the IRM be extended by one year, as opposed to two, to "allow further information to be obtained through the reconciliation of Year 1, in Case No. U-21918, and

[196] PFD at 866.
[197] UCC Initial Brief at 104.

the reconciliation for Year 2."[198] UCC agrees with this recommendation. The proposed more incremental approach supports the accountability, transparency, and equity goals of the IRM.[199]

G. The Commission Should Order the Company to Improve Community Engagement.

1. The PFD Does Not Consider All of UCC's Community Engagement Arguments, as Is Legally Required.

The PFD fails to analyze and appropriately consider UCC's evidence when issuing its recommendations. The PFD states that while it "encourages Consumers to take to heart [UCC Witness] Ms. Williams' comments about Company position and prominence at community events, making certain that both the Company's presence and information are visible and engaging, the Company's outreach, while not necessarily optimal in reaching those in need, cannot be said to lack reasonableness or prudence."[200] To improve engagement, the PFD only recommends that Consumers "increase the color graphics and increase the font size in at least some of their handouts at community events to make them easier to read."[201] The PFD issues this recommendation despite substantial evidence that UCC presented that Consumers' current community engagement efforts are insufficient, unreasonable, and imprudent.[202] The PFD considers neither UCC's specific and detailed recommendations for improved community engagement nor the evidence supporting them.

In UCC's briefings, UCC explained that "[c]ommunity engagement is when an organization works to build lasting relationships to apply a collective vision that benefits the entire

[198] PFD at 865–66.
[199] *See* UCC Initial Brief at 100 (arguing that "the Commission should proceed cautiously before extending the IRM in light of the issues raised by the current IRM, including the ongoing and incomplete reconciliation process").
[200] PFD at 935.
[201] *Id.*
[202] *See generally* UCC Initial Brief at 108–20; UCC Corrected Reply Brief at 17–21.

community."[203] UCC submitted evidence that Consumers has prioritized *customer* engagement activities focused on sales and service over meaningful *community* engagement related to affordability, reliability, and environmental justice.[204] It is not clear how the PFD's sole recommendation to Consumers to adjust the color and font size of its handouts[205] considers or responds to any of UCC's arguments. Absent a more detailed explanation, it is not evident how format changes would improve communication about affordability, reliability, or environmental justice. At best, handout font color and size are incidental to broader community engagement efforts, addressed extensively in UCC's initial brief.[206]

As described in Section II above, the Commission's review of the PFD and order in this case must adhere to the Michigan Constitution and Michigan law. In considering issues related to community engagement, the Commission must factor in "the whole record," including UCC's evidence and arguments that Consumers' community engagement efforts are insufficient, unreasonable, and imprudent.[207] The Commission should specifically recommend that the Company's community engagement efforts offer accessible, meaningful opportunities for dialogue on affordability, reliability, and environmental justice. In recommending only that Consumers "increase the color graphics and increase the font size in at least some of their handouts at community events to make them easier to read,"[208] the PFD is arbitrary and capricious under Michigan law because it "reflects an absence of consideration or adjustment with reference to principles, circumstances, or significance."[209] As a result, if the Commission does not consider

[203] UCC Initial Brief at 108 (quoting Cira-Reyes Direct Testimony at 3 TR 2346).
[204] *Id.* at 108–09.
[205] PFD at 935.
[206] *See* UCC Initial Brief at 108–20.
[207] MCL § 24.306(1)(d).
[208] PFD at 935.
[209] *Kelly v. Parole Bd.*, 2017 WL 3316951, at *13 (Mich. Ct. App. Aug. 3, 2017) (quoting *Wescott v. Civil Serv. Comm.*, 298 Mich. App. 158, 162 (2012)) (setting out arbitrary and capricious standard); *see also*

UCC's evidence and arguments, Michigan courts would be bound to set aside the Commission's order as unlawful.[210]

2. The Commission Must Consider UCC's Arguments About LMI Customer Support Enhancement Project Expenditures.

The Commission must consider UCC's evidence and arguments about the lack of transparency and efficacy in Consumers' LMI Customer Support Enhancement Project. It should order the Company to provide quarterly reporting on its benefits and costs.

The PFD does not address UCC's arguments about the lack of transparency and concerns about the efficacy of the LMI Customer Support Enhancement Project. In considering the project, the PFD ultimately "recommends allowance of the LMI Customer Support Enhancement project capital expenditures."[211] UCC agrees with this recommendation. However, in its briefings, UCC presented evidence on the need for transparency, as well as its concerns about the project's efficacy, enrollment barriers, and communication.[212] The PFD summarizes some of UCC's points, including UCC's concerns about assistance programs more broadly,[213] but it does not address many of UCC's clearly established concerns with the LMI Project, including those echoed by MPSC Staff.[214] Project expenditures must be transparent, accountable, and responsive to the

SBC Mich. v. Mich. Pub. Serv. Comm'n, 2005 WL 1106559, at *5 (Mich. Ct. App. May 10, 2005) (finding MPSC action to be arbitrary, capricious, and unreasonable action).

[210] As established in Section II, under Michigan law, a court will reverse an agency decision if that decision is "arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion." *Kelly v. Parole Bd.*, 2017 WL 3316951, at *13 (Mich. Ct. App. Aug. 3, 2017) (quoting *Wescott v. Civil Serv. Comm.*, 298 Mich. App. 158, 162 (2012)) (setting out arbitrary and capricious standard).

[211] PFD at 351.

[212] *See* UCC Corrected Reply Brief at 17–19 (finding that there is not clear data on how the Program has helped to address affordability issues for LMI customers; that the company has not provided information on what assistance programs customers have enrolled in as a result of engaging with the tool; that community members are unaware of the program; and that community members, including those with disabilities and other vulnerabilities, face communication barriers and enrollment challenges)*; see generally* UCC Corrected Reply Brief at 17–21.

[213] PFD at 344.

[214] *See* UCC Corrected Reply Brief at 19.

problems that justified the project's development in the first place.[215] UCC recommended that the Company "report publicly on a quarterly basis on the benefits delivered to all customers, particularly LMI customers, and the costs incurred to secure those benefits as a part of the LMI Customer Support Enhancement Project."[216] In recommending unqualified approval of project expenditures, the PFD says nothing about UCC's arguments, nor does it address the project's transparency, accountability, and responsiveness. [217]

As described in Section II, Michigan law requires the Commission to consider the evidence UCC raised in its briefs, as Michigan courts must set aside agency orders that are procedurally deficient and cause material prejudice to a party or are unsupported by the evidence.[218] The PFD's failure to analyze and address UCC's evidence in issuing its recommendation would cause material prejudice to UCC should the Commission adopt the recommendation without further analysis. The Commission must consider UCC's arguments and evidence and should order the Company to report quarterly on benefits delivered to all customers, particularly LMI customers, and the costs incurred to secure those benefits through the LMI Customer Support Enhancement Project.[219]

3. The Commission Must Consider UCC's Evidence Regarding Other O&M Expenses.

The PFD failed to consider UCC's arguments and evidence related to Analytics and Outreach and Digital Customer Operations expenses for the test year. UCC presented evidence and arguments in its briefing regarding Consumers' failure to provide information about and

[215] UCC Initial Brief at 109–15.
[216] *Id.* at 119.
[217] *See Kelly v. Parole Bd.*, 2017 WL 3316951, at *13 (Mich. Ct. App. Aug. 3, 2017) (quoting *Wescott v. Civil Serv. Comm.*, 298 Mich. App. 158, 162 (2012)) (setting out arbitrary and capricious standard).
[218] MCL § 24.306(1)(c).
[219] UCC Corrected Reply Brief at 20 (stating the reporting should "includ[e] specific enrollment metrics for payment assistance programs and benefits delivered to LMI households").

justification for its proposal for more than $4 million of proposed investments in Analytics and Outreach and Digital Customer Operations for the test year.[220] The PFD completely omits UCC's arguments. Under the Michigan Constitution, which requires the Commission to consider the "whole record," the Commission must consider UCC's arguments when issuing its ruling.[221] The Commission should reject the Company's proposal, as it has not provided sufficient information about how these expenditures benefit ratepayers,[222] and recommend that the Company gives adequate justification for its planned expenditures.

4. The Commission Must Consider UCC's Arguments About Coordination and Outreach with Environmental Justice (EJ) Organizations.

The Commission must consider UCC's arguments about coordination and outreach with EJ organizations. Despite UCC's evidence,[223] the PFD does not offer a direct recommendation regarding UCC's arguments on outreach and engagement with EJ organizations. The PFD does not consider UCC's evidence and requests when it recommends changes to the formatting of the Company's handouts at community events.[224] It is unclear how changes to handout formatting will affect whether the Company connects with EJ communities or diversifies its outreach strategy.

Under the Michigan Constitution, Commission orders must be supported by "competent, material and substantial evidence on the whole record."[225] The Commission must consider UCC's evidence, lest the order be without substantial evidence on the whole record. After considering UCC's evidence, the Commission should recommend that "the Company proactively reach out to

[220] *See* UCC Initial Brief at 115–17.
[221] MICH CONST. art. 6, § 28.
[222] See UCC Initial Brief at 116.
[223] *See id.* at 117–119 (providing an extensive analysis of the need for greater partnership with environmental justice organizations and the benefits of doing so).
[224] PFD at 935.
[225] MICH CONST. art. 6, § 28; *see also supra* Section II.

EJ communities and offer accessible opportunities for dialogue on affordability and reliability issues, such as town halls and focus groups with representative members of the community."[226] The Commission should also require the "Company to report on the feedback the Company is receiving from community members and how it is addressing that feedback."[227]

5. The PFD Mischaracterizes UCC's Recommendations About Automatic Enrollment in Assistance Plans.

The PFD mischaracterizes UCC's arguments about enrollment in assistance plans. This mischaracterization is based on a prior mischaracterization by Consumers in its initial brief, despite UCC's corrected reply brief addressing this mischaracterization. The PFD notes that "Consumers rejects UCC's suggestion that enrollment be made automatic without applications[,]"[228] and then it recommends against automatic enrollment.[229] In doing so, the PFD responds to Consumers' mischaracterization of UCC's argument. However, in UCC's corrected reply brief, UCC noted that "UCC is not asking the Company to take action that it is statutorily prohibited from doing."[230] Instead, UCC expressed concern about the low enrollment levels in payment assistance plans[231] and emphasized that "[t]he Company can and should take additional steps to increase enrollment in assistance programs that are within its power."[232] In rejecting an automatic enrollment program for assistance plans, the PFD continues to mischaracterize—and therefore does not effectively address—UCC's arguments that the Company needs to take additional steps to increase enrollment

[226] UCC Initial Brief at 120; *see also* UCC Corrected Reply Brief at 21.
[227] UCC Initial Brief at 120; *see also* UCC Corrected Reply Brief at 21.
[228] PFD at 934.
[229] *Id.* at 935.
[230] UCC Corrected Reply Brief at 3–4.
[231] *Id.* at 4 (noting that "only one of every six low-moderate income ("LMI") customers in Consumers' territory is enrolled in at least one assistance program").
[232] *Id.* at 4.

in assistance plans. The Commission should therefore order the Company to take additional steps to increase enrollment in assistance programs that are within its power.

IV. CONCLUSION AND PRAYER FOR RELIEF

Consistent with the concerns and positions articulated above, UCC respectfully reiterates its requests from its initial and corrected reply briefs.

Date: February 17, 2026

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates for generation and distribution of electricity and for other relief.	Case No. U-21870 ALJ Jonathan F. Thoits

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PROOF OF SERVICE

I, Mark N. Templeton, certify that an electronic copy of the Exceptions to the Proposal for Decision on Behalf of Urban Core Collective was served on the following on February 17, 2026.

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

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