

VARNUM

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

Justin K. Ooms

Direct 616 / 336-6374
jkooms@varnumlaw.com

February 26, 2026

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

Re: MPSC Case No. U-21870

Dear Ms. Felice:

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

Thank you for your assistance in this matter.

Sincerely yours,

VARNUM



Justin K. Ooms

JKO/plf

Attachment(s)

c: All parties of record.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **Consumers**)
Energy Company for authority to increase its)
rates for the generation and distribution of) **Case No. U-21870**
electricity and for other relief.)
_____)

REPLIES TO EXCEPTIONS
OF
THE MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL,
THE INSTITUTE FOR ENERGY INNOVATION
AND
ADVANCED ENERGY UNITED

Justin K. Ooms
Laura A. Chappelle
Varnum LLP
Attorneys for the
Michigan Energy Innovation Business Council,
Institute for Energy Innovation and
Advanced Energy United
333 Bridge Street NW, Suite 1700
Grand Rapids, MI 49504
(616) 336-6374

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I. INTRODUCTION

Pursuant to Rule 435 of the Michigan Public Service Commission’s (“Commission” or “MPSC”) Rules of Practice and Procedure, R 792.10435, and in accordance with the schedule set in this proceeding by Administrative Law Judge (“ALJ”) Jonathan F. Thoits, the Michigan Energy Innovation Business Council (“Michigan EIBC”), the Institute for Energy Innovation (“IEI”) and Advanced Energy United (“United”; collectively with Michigan EIBC and IEI, “MEIU”), submit these Replies to Exceptions to the Proposal for Decision (“PFD”) issued in this case on January 29, 2026.¹

Except as otherwise expressly noted, in submitting these Replies to Exceptions, MEIU continue to adhere to the positions they have taken throughout this proceeding in their testimony, briefing and Exceptions. As such, MEIU’s failure here to reply to any particular Exception of any other party should not be construed as signifying an agreement with such Exception nor a waiver

¹ Notice of Amended Proposal for Decision, Case No. U-21870, Filing No. U-21870-0473, dated January 29, 2026 (“PFD”).

of the positions they have previously taken in their testimony, briefing and/or Exceptions with respect to the issues raised in this case.

II. REPLIES TO EXCEPTIONS

A. Consumers Energy's Desire for "Flexibility When Evaluating Rebate Applications" Does not Provide a Suitable Basis for Denying Reasonable Certainty to Applicants for Direct Current Fast Charger Rebates as to How Their Applications Will Be Evaluated.

Consumers Energy Company ("Consumers" or the "Company") takes exception to the PFD's recommendation that the Commission "direct the Company to clearly state which 'traditional government boundary' it considers a 'community' for the purpose of [determining Direct Current Fast Charger ("DCFC")] rebate eligibility." Exceptions of Consumers Energy Company, Case No. U-21870, Filing No. U-21870-0482 ("Consumers Exceptions") at 54. The Company also appears to take exception to the PFD's recommendation that the Commission direct it to improve "the criteria the Company uses to evaluate rebate applications" more broadly. *Id.*

The PFD made these recommendations on the basis of arguments presented by MEIU witness Sophia Schuster. As stated in the PFD:

As to MEIU's recommendation that the Company be required to explicitly define "community" for rebate eligibility, this PFD concurs that Mr. Myrom's definition *leaves applicants in the dark as to the area they need to evaluate when consider[ing] an application for rebate* and therefore, this PFD recommends the Commission direct the Company to clearly state which "traditional government boundary" it considers a "community" for the purpose of rebate eligibility. Additionally, this PFD *finds it reasonable for applicants to know how their application for rebate will be evaluated*, therefore, this PFD recommends the Commission direct the Company to publish a clear rubric and methodology that will govern its application evaluation.

PFD at 405 (emphasis added).

In taking exception to the PFD's recommendations, the Company suggests the Commission "respect" its "management prerogative" in this matter. Consumers Exceptions at 54. To the extent that this veiled reference to *Union Carbide* claims that the Commission is without authority to

direct the Company's actions in this instance, it amounts to an assertion that the Company should really be entitled to disburse ratepayer funds at its discretion as a matter of law. This is simply incorrect.

Under *Union Carbide Corp v Public Service Com'n*, "The power to fix and regulate rates . . . does not carry with it . . . the power to make management decisions." 431 Mich 135, 148 (1988). As the Michigan Supreme Court pointed out in that same case, however, the Commission may certainly deny recovery of costs incurred by Consumers when making management decisions that the Commission deems unreasonable or imprudent. According to the Court, "The commission possesses the authority to regulate a utility's rates and charges. It exercised that authority by precluding Consumers' recovery of those increased charges incurred as a result of the company's noneconomic operation of the Karn units." *Id.* at 149–50. The Court made this point even more clearly in *Consumers Power Co v Public Service Com'n* when characterizing its decision in *Union Carbide*, stating, "The PSC can encourage a specific management decision through the exercise of its ratemaking power, but it may not directly order the utility to make the decision." 460 Mich 148, 158 (1999).

Unlike in *Union Carbide*, where Consumers' management decision involved running certain power plants out of economic merit order subject to Commission disallowance of costs, the rebate programs at issue here consist of essentially pre-approved funds dedicated to rebates, to be disbursed to customers under terms approved by the Commission. The decision of who is entitled to receive ratepayer funds and who is not rests squarely within the Commission's authority and is not subject to Consumers' discretion.

Because the purpose of the DCFC rebate program—to spur on the development of DCFC chargers where they are most needed—is best served when prospective rebate applicants are able

to predict reasonably accurately whether they will be able to obtain a rebate to support their proposed chargers, the Commission should follow the recommendation of the PFD and direct Consumers to “clearly state which ‘traditional government boundary’ it considers a ‘community’ for the purpose of rebate eligibility” and to “publish a clear rubric and methodology that will govern its application evaluation.” PFD at 405. Consumers’ mere desire for “flexibility” is not a valid contravening factor.

B. Staff’s Lack of Curiosity Regarding DCFC Rates is No Reason to Reject a DCFC Rate Workgroup.

In their Exceptions, Staff claim that “there is no need for a workgroup to discuss an Electric Vehicle (EV) Fast Charging Tariff,” arguing that “the parties’ various positions on a DC Fast Charging tariff are already substantially developed, mutually exclusive, and unyielding.” Exceptions of MPSC Staff, Case No. U-21870, Filing No. U-21870-0478 (“Staff Exceptions”) at 24. As far as MEIU are concerned, the only positions that could fairly be described as “unyielding” are those of the Staff themselves. Although MEIU have raised concerns related to the impact of particular rate designs on DCFC development, particularly in lower-utilization areas, see, *e.g.*, 6 Tr 4182, they have otherwise expressed interest in broad investigations of rate design options, based in part on best practices from other jurisdictions. Per witness Schuster:

I do agree with witness Krause that these are important issues for the Company to evaluate and study. As such, I recommend that the Commission require the Company to conduct a comprehensive evaluation of best practices as it relates to DCFC tariffs being implemented in other states and countries. To adequately inform its evaluation, the Company should conduct a stakeholder convening to gather key stakeholder and industry feedback on issues related to DCFC tariffs and demand charges, as suggested by Walmart witness Matthew Lyon. The Commission should then require Consumers by a reasonable later date (*e.g.*, December 1, 2026) to present its findings and propose a long-term plan for the eventual implementation of an appropriate DCFC tariff. These discussions, coupled with the new data available from DCFC stations energized in the coming years, should enable the Company to conduct a more comprehensive COSS to inform whether a future DCFC-specific rate proposal is suitable and, if so, determine an appropriate tariff structure.

6 Tr 4189.

Furthermore, the likelihood that any particular workgroup will “result in any form of consensus,” Staff Exceptions at 24, should not be a basis for accepting or rejecting the PFD’s recommendation that a workgroup be convened. A workgroup provides opportunities for more informal exchange of ideas which may help inform a path forward, which may or may not present as an emerging consensus. Especially since any resulting rate proposal will be subject to Commission approval, the lack of a potential for future litigation should not be used as a criterion for convening a workgroup.

III. CONCLUSIONS AND PRAYER FOR RELIEF

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


- (a) Accept Consumers’ forecast of EV adoption as reasonable;
- (b) Adopt Consumers’ proposed “enhancements” to its EV rebate programs, subject to the modifications advocated by MEIU as stated in MEIU’s Initial Brief;
- (c) Reject Consumers’ proposal to cut the incentive provided under the PTR program in half unless and until the Company provides evidence that the current incentive levels exceed the value provided by PTR participants;
- (d) Reject the Staff’s recommendation to close Rate GP to EV charging customers and to require Consumers to file an EV fast charging rate proposal in its next rate case;
- (e) Direct Consumers, as a prerequisite for filing an EV fast charging rate proposal in the future, to conduct a comprehensive evaluation of best practices as it relates to DCFC tariffs being implemented in other states and countries, to conduct a stakeholder convening to gather key stakeholder and industry feedback on issues related to DCFC tariffs and demand charges, and to present its findings and propose a long-term plan for the eventual implementation of an appropriate DCFC tariff;
- (f) Develop an electric heating/heat pump rate for inclusion in its next rate case;

- (g) Explicitly confirm its expectation that Consumers continue to make its inventory of equipment with long acquisition lead times available to DER and EV projects initiated by third parties on the same basis that such equipment is available to the utility for projects that it initiates;
- (h) Direct Consumers to work with stakeholders to develop a VPP program in line with that recommended by CEO witnesses Kenworthy and Boehke; and
- (i) Grant such other relief as the Commission deems lawful, necessary, reasonable or prudent.

Respectfully submitted,

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

February 26, 2026

By:  _____

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

28691856.4

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Case No. U-21870

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

Pamela Fox, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on Thursday, February 26, 2026, she served a copy of the Replies to Exceptions of the Michigan Energy Innovation Business Council, the Institute for Energy Innovation, and Advanced Energy United, along with this Proof of Service upon those individuals listed on the attached Service List via email.

Pamela Fox

Administrative Law Judge

Honorable Jonathan F. Thoits
thoitsj@michigan.gov

Consumers Energy Company

Spencer A. Sattler
 Crystal L. Chacon
 Mark R. Ruszkiewicz
 Gary A. Gensch Jr.
 Evan B. Keimach
 Kelly Hall
 Bret A. Totoraitis
 Anne M. Uitvlugt
spencer.sattler@cmsenergy.com
crystal.chacon@cmsenergy.com
mark.ruszkiewicz@cmsenergy.com
gary.genschjr@cmsenergy.com
evan.keimach@cmsenergy.com
Kelly.hall@cmsenergy.com
bret.totoraitis@cmsenergy.com
anne.uitvlugt@cmsenergy.com
mpsc.filings@cmsenergy.com

Hemlock Semiconductor Operations, LLC
Solar Technology LLC

Jennifer U. Heston
jheston@potomaclaw.com

Great Lakes Renewable Energy Association

Don L. Keskey
donkeskey@publiclawresourcecenter.com

Walmart, Inc.

Melissa M. Horne
mhorne@hcc-law.com

Attorney General

Celest R. King*
 Lucas Wollenzien*
 Sebastian Coppola*
GillC1@michigan.gov
Wollenzien1@michigan.gov
Ag-enra-specLit@michigan.gov
sebcoppola@corplytics.com

Michigan Environmental Council
Natural Resources Defense Council
Sierra Club
Citizens Utility Board of Michigan

Tracy Jane Andrews*
 Christopher M. Bzdok*
 Holly L. Hillyer*
 Natasha Fowles*
 Jackson Neme*
 Tyler Comings*
 Tanya Stasio*
 Jordan Burt*
 Caroline Palmer*
 Matt Bandyk
 Julielyn Gibbons
 Rick Bunch
 Sean Clark
tjandrews@tropospherelegal.com
chris@tropospherelegal.com
holly@tropospherelegal.com
natasha@tropospherelegal.com
jackson@tropospherelegal.com
tyler.comings@aeclinic.org
tanya.stasio@aeclinic.org
Jordan.burt@aeclinic.org
cpalmer@synapse-energy.com
mbandyk@synapse-energy.com
jgibbons@5lakesenergy.com
rbunch@5lakesenergy.com
sean@tropospherelegal.com

Urban Core Collective ("UCC")

Mark Templeton*
 Jacob R. Schuhardt*
templeton@uchicago.edu
j.schuhardt@uchicago.edu
aclc mpse@lawclinic.uchicago.edu

*Receives Confidential Materials

The Kroger Co. ("Kroger")

Kurt J. Boehm
 Jody Kyler Cohn
 Michael L. Kurtz
 Justin Bieber
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com
mkurtz@bkllawfirm.com
jbieber@energystrat.com

MPSC Staff

Amit T. Singh
 Adam M. Cozort
 Alena M. Clark
 Daniel E. Sonneveldt
 Nicholas Q. Taylor
 Michael J. Orris
 Mike Byrne*
 Bill Stosik*
 David Chislea*
 Bob Nichols*
 Nick Revere*
 Lori Mayabb*
Singha9@michigan.gov
orrism@michigan.gov
sonneveldtd@michigan.gov
taylorn10@michigan.gov
clarka55@michigan.gov
cozortal@michigan.gov
byrnem@michigan.gov
stosikb@michigan.gov
chislead@michigan.gov
nicholsb@michigan.gov
reveren@michigan.gov
mayabbl@michigan.gov

Michigan Cable Telecommunications Association ("MCTA")

Sean P. Gallagher
 Jon Austin
sgallagher@fraserlawfirm.com
jaustin@fraserlawfirm.com

Citizens Utility Board of Michigan ("CUB")

John Liskey
john@liskeypllc.com

Foundry Association of Michigan

Energy Michigan
Michigan Energy Innovation
Business Council
Institute for Energy Innovation
Advanced Energy United

Laura A. Chappelle
 Timothy J. Lundgren
 Justin K. Ooms
lachappelle@varnumlaw.com
tjlundgren@varnumlaw.com
jkooms@varnumlaw.com
ewheeler@cleangridalliance.org
laura@mieibc.org
natalie@mieibc.org

Counsel for The Ecology Center

The Environmental Law & Policy Center ("ELPC")
Union of Concerned Scientists ("USC")

Vote Solar

Daniel Abrams*
 Katie Duckworth*
 Alondra Estrada*
 Katie Toolan*
dabrams@elpc.org
kduckworth@elpc.org
aestrada@elpc.org
ktoolan@elpc.org
mpscdockets@elpc.org

Michigan Electric Transmission Company, LLC

Richard J. Aaron*
 Courtney F. Kissel*
 Olivia R.C.A. Flower*
 Hannah Buzolits*
 Anthony J. Hunt*
 Josh L. Kluzak
Raaron@dykema.com
ckissel@dykema.com
oflower@dykema.com
hbuzolits@dykema.com
ahunt@dykema.com
jkluzak@dykema.com

*Receives Confidential Materials

<p><u>Association of Businesses Advocating Tariff Equity (ABATE)</u> Benjamin J. Holwerda Stephen A. Campbell Michael J. Pattwell James Dauphinais Jessica York Christina Hildebrandt scampbell@clarkhill.com bholwerda@clarkhill.com mpattwell@clarkhill.com jdauphinais@consultbai.com jyork@consultbai.com childrebrandt@consultbai.com</p>	
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