

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for **UPPER PENINSULA POWER COMPANY** to fully comply with Public Act 295 of 2008, as amended.

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Case No. **U-21684**  
(e-file paperless)

**MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S  
INITIAL BRIEF**

**MICHIGAN PUBLIC SERVICE  
COMMISSION STAFF**

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## **I. Introduction**

On July 1, 2025, Upper Peninsula Power Company (UPPCO) filed its Application requesting approval from the Commission for its 4-year Energy Waste Reduction (EWR) plan and related surcharges. UPPCO averred that pursuant to section 71 of 2008 PA 295, an EWR Plan must “(a) propose a set of EWR programs that include offerings for each customer class, (b) specify necessary funding levels, (c) describe how EWR program costs will be recovered, (d) ensure that, to the extent feasible, charges collected from a particular rate class are spent on EWR programs for that rate class, (e) demonstrate that the proposed EWR programs and funding are sufficient to ensure achievement of the applicable standards, (f) specify megawatt hours of electricity used in the calculation of incremental energy savings will be based on the average number of megawatt hours of electricity sold by the provider annually during the previous 3 years to retail customers in this state, (g) demonstrate that the EWR programs, excluding program offerings to low-income residential customers, will be cost-effective, (h) provide for the practical and effective administration of the proposed EWR programs, and (i) include a process for obtaining an independent expert evaluation of the actual EWR programs to verify the incremental energy savings from each EWR program.” (UPPCO’s Application, p 2). As part of its Application and supporting pre-filed testimony and exhibits, UPPCO also included a request for authority to implement a voluntary Efficient Electrification Measures Plan (FEEL) with deferred cost recovery.

## II. Statutory Framework

Act 229 amended Public Act 295 of 2008 (Act 295) which requires electric or natural gas providers to have an approved EWR program. The amendment increased the percentage energy savings requirement in Section 77(1) of Act 229 so that each year beginning in 2026, an electric provider's EWR programs must collectively achieve an incremental energy savings equivalent to 1.5% of total retail electric sales in megawatt hours in the preceding year with an EWR measure having an 8-year average measure life. (MCL 460.1077). Exhibit S-1. Act 229 also amended the requirement of Act 295 that each year through 2025, a natural gas providers' EWR program achieve an incremental energy savings equivalent to 0.75% of total retail natural gas sales of the previous year. (MCL 460.1077(7)). Beginning in 2026, natural gas providers' EWR programs must 6 achieve an incremental energy savings equivalent to 0.875% of total retail natural gas sales with an average savings life of at least 10 years. (*Id.*).

Act 229 added Section 80 to Act 295, which requires that electric and natural gas providers must offer low-income EWR programs to assist low-income residential customers in both single-family and multifamily households. (MCL 460.1080(1)). Section 80 also provides that a low-income EWR program "shall be designed and funded with the goal that low-income residential customers achieve levels of energy waste reduction similar to or greater than the levels of energy waste reduction of other residential customers." (MCL 460.1080(2)). Sections 80(3) and 80(4) of Act 229 provide that an electric provider and a natural gas provider's annual expenditure to implement the low-income EWR programs and measures shall be at

least 25% and 35% of total energy waste reduction program spending, respectively, by January 1, 2029. (MCL 460.1080(3-4)). Finally, Section 80 adds that “providers shall minimize barriers to participation in low-income energy waste reduction programs and reduce overly burdensome verification processes . . .” as outlined in the details of Act 229. (MCL 460.1080(5)).

Act 229 also added Sections 71(6) and 72 to Act 295. Section 71(6) provides that beginning January 1, 2025, “an electric provider shall file its energy waste reduction plan as part of a customer energy optimization plan.” A customer energy optimization plan “shall include an energy waste reduction plan and may include an efficient electrification measures plan.” (MCL 460.1071(6)). Section 72 states that “[b]eginning January 1, 2025, an electric provider may implement an efficient 7 electrification measures plan under section 71(6) [of Act 295 as amended by Act 229].” (MCL 460.1072(1)).

### **III. Argument**

#### **A. UPPCO’s EWR plan should be approved with several minor changes while it’s EFEL Plan should not be approved.**

UPPCO filed an EWR plan for 2026-2029. The plan is adequate and meets the standards provided in PA295. Staff proposed changes to the EWR plan and requested the Commission approve the EWR plan with the changes recommended by staff.

UPPCO also filed an EFEL plan for the first time. Staff found the “Plan” to be inadequate and lacking important specifics. The Company failed to provide cost

estimates as well as planned measure amounts to strive for each year. This makes it impossible to gauge the magnitude of the EFEL plan and assess overall plan costs.

Staff witness Katie J. Smith, Economic Specialist in the Energy Optimization Section of the Energy Resources Division of the MPSC, testified that the Company's EWR plan targets and planned spending are sufficient. (3 TR 128.) However, Staff witness Smith recommends the Commission deny the Company's request to continue its pilot spending at 7% of total spend. The Company had requested in the past to increase pilot budgets from 5% to 7% to accommodate health and safety and workforce development. However, as explained by witness Smith, "The pilot budgets have increased in recent years due to the need to explore and develop health and safety programs and workforce development initiatives; but now that those are "stand alone" programs due to the amendment to the Act, the cap for pilots should be reduced back down to the historical 5%." (3 TR 128-129.) Staff did suggest a new pilot program that if the Company were to agree to do it, would warrant a higher pilot spend. This program is the 211 Centralized Platform as described by Staff Witness Elizabeth Yeager. If the Company were to do this pilot program Staff would agree with keeping the pilot budget at 7%. If not, Staff maintains a return to 5%. (3 TR 129.)

Staff witness Smith explained that Measured Savings Pilot should not be housed in pilots, but would be better suited in the evaluation, measurement, and verification spending budget. (*Id.*) The Company itself included the

recommendation for measured savings in a section of Exhibit A-1 entitled Evaluation, Measurement, and Verification. (Exhibit A-1, p 5.). Additionally, even if it remained a pilot, Staff recommends against implementing it as a full-scale program until the results of the program are presented to Staff and the Commission for review. Pilot spending should be a way for the Company to invest in new and innovative programs and measures that will increase the benefits of EWR for their customers and result in energy savings. Pilot dollars spent in an EWR plan receive deemed savings as a percentage of the overall energy savings target. This is the reason that pilot dollars should be utilized to add value to future EWR programs that the customers can directly benefit from.

Staff witness Smith recommended the Commission reject the Company's EFEL plan and direct it to file a new plan that includes missing information that would constitute an actual plan. (3 TR 136.) Staff asserts that the current EFEL plan lacks cost assessments, measures, and cost effectiveness evaluation strategies to be utilized along with the subsequent impact to customer rates. Staff also provided an alternative if the Commission were to accept the Company's filed EFEL plan, which is to accept the plan but cap spending at \$1 million dollars. (*Id.*) This would keep the EFEL plan at a reasonable spending amount and allow Staff to review the Company's actuals without placing unreasonable costs on customers.

Staff also argues that cost-effectiveness must be demonstrated in an EFEL plan because EFEL measures are defined to be cost-effective, and that this should be shown by a cost-benefit. (3 TR 133.) The Company responded that the UCT is

not appropriate for EFEL plans, and that it need only show that EFEL measures meet the requirements of Sec. 72(1). (3 TR 68.) Staff was not, and is not, proposing the UCT specifically. However, Staff maintains that the requirements of Sec. 72(1) do not necessarily prove cost-effectiveness of the plan. Therefore, Staff requests that the Commission require a cost-benefit analysis be performed for EFEL plans.

**1. EM&V is required, however creating EFEL measures is the responsibility of providers.**

UPPCO objects to any evaluation, measurement, and verification (EM&V) requirement for EFEL plans, but agrees that EM&V is a best practice. (3 TR 102.) Staff disagrees. The statutory provision MCL 460.1005(a) provides that EFEL measures meet “best-practice standards for cost-effective energy efficiency as determined by the commission.” Based on the plain language of this provision, Staff asserts that the Company is required to ensure EFEL measures meet EM&V requirements.

UPPCO claims that EM&V is also not required because the “EFEL Plan includes custom analysis of every measure before implementation.” (3 TR 102.) Some of the main purposes of EM&V are: impact evaluations (quantifying the energy impacts); process evaluations (determining program effectiveness); and market evaluations (assessing the market and the program’s effect on it). Many of these activities are performed after implementation, therefore, while custom analysis may, hypothetically, have some effect on how much EM&V will be sufficient, it will never completely eliminate the need for EM&V. UPPCO argues

that EM&V is hindered, and rendered unnecessary by the custom analysis, because the MEMD contains only two EFEL measures, and proceeds to blame the lack of measures on Staff. (3 TR 102-103.) Staff disagrees. First, as noted above, the proposed custom analysis does not supplant the need for EM&V. Second, the need for EM&V is not negated by a measure’s inclusion in the MEMD as shown by EM&V requirements for EWR measures—the vast majority of which are included in the MEMD. Lastly, the Commission has not placed the responsibility of adding new EFEL measures to the MEMD on Staff. As acknowledged by UPPCO in direct testimony, the Commission found in U-21567 that “the Energy Optimization (“EO”) Collaborative and its MEMD updating process is the most reasonable for vetting EFEL measures.” (MPSC Case No. U-21567, 11/7/24 Order, pp 24-25.) The process allows for potential EFEL measures to be introduced by utilities, contractors, and interested partners where they would undergo a review process<sup>1</sup>. The Company is incorrect in asserting that it is Staff’s obligation to create the EFEL measures and bypass the process.

Both Staff and UPPCO refer to Sec. 5(a), the definition of an EFEL measure, and Sec. 72(1), which provides additional requirements on EFEL measures. (MCL 460.1005(a); MCL 460.1072(1)). Staff maintains that both sections must be considered when determining whether a measure is a valid EFEL. By definition, an EFEL measure must: be an efficient version of the measure when compared to the

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<sup>1</sup> Michigan Energy Measure Database (MEMD) Overview & Maintenance Process Manual, <https://www.michigan.gov/mpsc/consumer/energy-optimization/michigan-energy-measures-database>

existing measure and shown to result in a reduction of total energy consumption; meets best practice standards; and is cost-effective. (MCL 460.1072; MCL 406.1005(a)) However, UPPCO argues that one or more of these defined characteristics can be overlooked as long as a measure provides health and safety benefits. Staff disagrees that applying the statutory definition is an attempt “to apply additional criteria to EFEL measures” as characterized by UPPCO. (3 TR 103.) Staff argues that excluding a measure that is less efficient, as “measured by on-site energy consumption than the fossil-fueled alternative” would be a “valid interpretation of legislative intent” for an efficient electrification program (3 TR 104).

Regarding SEMCO’s position, SEMCO, similar to Staff, discussed how UPPCO failed to provide sufficient evidentiary support for SEMCO, or any other party to reasonably assess the EFEL plan’s impact on customers or its compliance with statutory requirements. Staff agrees with SEMCO’s argument related to UPPCO’s EFEL Plan. SEMCO, also discussed how UPPCO’s EFEL Plan did not provide any defined set of measures, budgets, participation assumptions, and key performance indicators establishing a set of guardrails in which the utility is expected to operate ensuring value to its customers, compliance with the law, and a fair and equitable allocation of costs. Staff agrees with this assessment.

In response, UPPCO agreed with Staff that pilot programs would warrant a higher 7% budget with the 211 Centralized Platform and recommended continuing

at the 7%. (3 TR 87.) Staff would only recommend the 7% pilot budgeting if the Company is to implement the 211 centralized platform.

While UPPCO acknowledged that it did not provide expected installations per year, nor estimations of total costs for the EFEL program for each year, the Company also asserted that such information is not only difficult to develop with reliability but is also unnecessary. (3 TR 96-97) Staff disagrees. It is necessary to create an actual plan with cost estimates and planned measures. If the Company wants to implement an EFEL plan it should create a plan showing how much this should cost customers and how it will impact customers as well as how many customers will receive EFEL measures. While UPPCO argues that Staff has not developed electrification measures in the MEMD, indicating there is no basis for deemed results, staff reiterates, as mentioned above in this brief, that that is not the process laid out by the Commission. The Commission ordered in Case No. U-21567 that EFEL measures shall enter the MEMD via the established process, which is similar to the process for EWR measures. (3 TR 102-103) The process allows for EFEL measures to be introduced by utilities, intervenors and interested partners and undergo a review process. It is not the obligation of Staff to create EFEL measures and bypass the established process.

Further, while UPPCO argued that there is not a need for a reconciliation process for EFEL (3 TR 99) Staff points to the requirements in Section 72 of MCL 460.1072. In Staff's view, it would be difficult for the Company to demonstrate that it met the listed factors absent a reconciliation. The Company does not explain how

the subsections would be proven in lieu of a comprehensive EFEL plan and reconciliation. For these reasons, the Commission should order the Company to file a new EFEL plan that includes the above that can be reconciled.

Staff asks the Commission to find that EM&V is a requirement component of EFEL plans. Staff asks the Commission to support Staff's interpretation of the U-21567 order that it is the responsibility of the providers, considering that EFEL plans are optional, to propose new EFEL measures for inclusion in the MEMD in the same manner as EWR measures are added.

**B. If the Commission approves UPPCO's EFEL plan, the regulatory asset should be capped at \$1 million, and any surcharge should apply only to participating customers.**

Staff proposes a \$1 million cap on the regulatory asset, and that the program should operate as other EWR programs in that all expenses and revenues are tracked and reconciled yearly. (3 TR 128-130) UPPCO agrees. (3 TR 57 and 3 TR 61) Regarding UPPCO's EFEL plan surcharge, it should only be applied to customers who participate in the program. Section 72(3) of the Act states "An efficient electrification measures program under subsection (1) shall not have the effect of increasing electric rates for customers that do not participate in the program." UPPCO's EFEL Plan does not clearly demonstrate that non-participating customers will not see an increase in their electric rates. In fact, applying the EFEL surcharge to all customers as UPPCO proposes will inherently increase everyone's electric rates. The lack of clear expenses and potential revenues

in this plan make all explanations theoretical as to how applying an EFEL surcharge to non-participating customers would not increase their electric rates.

SEMCO witness Patrick Leahy explained that UPPCO did not clearly show how they will ensure non-participating customers will not experience increased electric rates. Witness Leahy explains that UPPCO's claim that "gross margin on increased sales" to create an overall rate decrease for non-participating customers is simplified and excludes a lot of factors that would impact electric rates, thereby not clearly proving the program would be in compliance with Section 72(3) of the act. (3 TR 174-175.) Witness Leahy also points out that "UPPCO stated that it defines "gross margin on increased sales" as distribution revenue from increased sales only, that this calculation is not regularly performed within its financial reporting, that screening will be done on a per-project basis while recovery will be sought on a portfolio basis." (3 TR 174.) Witness Leahy goes on to say UPPCO "does not establish specific mechanism, tracking account, or reconciliation process that would ensure incremental revenues are actually applied to offset EFEL costs.", and "UPPCO has not performed the minimum due diligence necessary to show that non-participating customers are protected from EFEL-related rate impacts.". (3 TR 176.)

In rebuttal, UPPCO agreed with the usage of an EFEL surcharge, as ordered in Case No. U-21567, 2/8/2024 Order, p 3, but disagreed that the surcharge should only be charged to program participants and should instead be charged to all customers for the following reasons: (1) UPPCO witness Andrew McNeally details

the claim that the increase in revenue from installing electrification measures, and the deferral of the cost through the use of the regulatory asset, will allow The Company to help delay a request for a rate increase, effectively lowering rates for all customer and because of this, the EFEL surcharge should apply to all customers and the net effect would potentially be lower rates for everyone. (3 TR 58-60.) The potential for a delayed rate increase and lower rates is not proof that this will lead to non-participating customers' electric rates not increasing. Not only are there no concrete plans on costs and revenues associated with the plan, but as SEMCO points out, UPPCO is excluding many factors that would impact rates from this scenario. (2) Company witness McNeally goes on to say that an EFEL surcharge for only program participants would be unfair to those customers as they'd be paying for the program and the incremental increase in sales by electrifying. (3 TR 60-61.) While it is true that an EFEL customer will see an incremental increase in their electric bill, Section 72(1)(a) of The Act states that an efficient electrification measure shall "reduce the total energy consumption of the premises." Therefore, the only costs borne by the program participant would be for the measure and program itself. Participation in an EFEL program is entirely optional for a customer. The benefit of lower overall consumption should be compared to the cost of participating in the program, which includes the EFEL surcharge and any cost of the installed measure. In contrast, applying an EFEL surcharge to all customers removes the voluntary participation away from customers and instantly increases their electric rate. (3) In addition, Company witness McNeally says that customers

who are provided line extensions that aren't directly charged for these line extensions is "exactly analogous" to the proposal for EFEL surcharges as set forth in this application. (3 TR 61) Comparing a customer's line extension to installing a fully optional EFEL measure is not "exactly analogous" by the fact that a line extension is providing for a building to receive electricity, while an EFEL measure is a choice to switch from one fuel type to another. One is arguable necessary and the other is purely voluntary.

Staff maintains that applying an EFEL surcharge to all customers will increase electric rates for all customers. It is a theory that increasing UPPCO revenues by installing electrification measures will lower electric rates. The burden of proof is on UPPCO to prove the installation of EFEL measures for one customer will not burden any other customers. The lack of real costs and revenues in this EFEL plan makes it impossible to verify an assertion that non-participating customers will not have their electric rate increase by paying an extra EFEL surcharge. If an EFEL plan is approved, Staff's recommendation is UPPCO is to only apply the EFEL surcharge to customers who choose to participate in the EFEL program.

**C. Staff's recommendations regarding health and safety (H&S), workforce development (WFD), and one innovative program**

Staff witness Yeager testified that H&S spending of 1% was reasonable as an annual spend. (3 TR 152.) Staff recommended the Company's H&S selection and documentation process be clear and objective to ensure consistency and

transparency. (*Id.*) Staff also encouraged the Commission to consider whether the Company's H&S program should expand and include additional measures and upgrades related to structural improvements (3 TR 152-153.)

Staff witness Yeager found the WFD annual program spend reasonable with the Company's investment of 2% in 2026 and 2027 plan years and 1% in 2028 and 2029 plan years. Staff recommended a more comprehensive WFD plan be provided because the initiatives described in testimony lacked sufficient details. Staff provided the legislative language and program recommendations to the Company.

Staff witness Yeager also testified about an innovative program, originating from U-20757, directing Staff to create or identify a central platform for scheduling, logging, and tracking EWR referrals. (3 TR 155.) Staff witness Yeager recommended UPPCO partner in these efforts and financially contribute to the Michigan 211 EWR Centralized Platform Initiative. (3 TR 156.)

In rebuttal, UPPCO confirmed health and safety spending be targeted at 1% of annual program spend. Additionally, UPPCO witness McNeally testified that UPPCO will include reporting on health and safety measures, spending, and EWR measures enabled by health and safety measures in the annual reports (3 TR 89.) UPPCO agreed to work with Staff to further detail the WFD programs. (*Id.*) UPPCO witness McNeally provided examples of various WFD trade priorities such as blower door testing, air sealing, energy audits, and other related duties. (3 TR 89-90.) UPPCO witness McNeally also reiterated planned targeted outreach to

agencies such as UP Michigan Works and MSU ITAC, with particular focus on Veterans through the Michigan Veterans Affairs Agency. (*Id.*)

UPPCO agreed to support and participate in the Michigan 211 EWR Centralized Platform, contingent upon the participation of the other regulated utilities in Michigan. (3 TR 88-89.) UPPCO provided recommendations in its rebuttal testimony that “that the audience focus be both energy assistance, to support the Michigan Energy Assistance Program and grantees, and energy waste reduction services, to support utilities and community-based organizations; and that the MI 211 onetime and annual costs be allocated among all utilities in the state proportionally based on sales in the same manner as the Michigan Energy Measured Database annual costs” (*Id.*)

Staff request that the Commission require UPPCO to provide a clear and objective selection process for H&S spend, and to consider requiring additional H&S measures and upgrades related to structural improvements. Staff recommend the Commission require UPPCO provide Staff with regular updates and work with Staff in the development of the Company’s WFD programs.

**D. The Company should continue to consider the most up-to-date potential studies and demand response (DR) analyses as future load management strategies are developed.**

Staff witness Joshua S. Towslee summarizes Staff’s general support of UPPCO’s proposed load management strategies and recommends the Company refer to the findings of Commission’s most recently issued potential studies for the development of any future load management programs. (3 TR 142-145.)

In its July 2025 filing, UPPCO acknowledged the Commission's concurrent efforts to produce an updated potential study. The Company notes that the timing of that 2025 study prevented its incorporation in the instant case, and that UPPCO's proposals are informed instead by the findings of the Commission's previous potential study, conducted in 2021. (Exhibit A-1 14.) In rebuttal Company witness Andrew McNeally asserts UPPCO's agreement with Staff's recommendation to reference the most recent studies available as UPPCO continues to develop and refine load management strategies. (3 TR 84.)

**E. The Commission's December 18, 2025 Order in Case No. U-21637 provides guidance for the regulatory treatment of future DR programs.**

Witness Towslee notes the open docket in Case No. U-21637, in which, among other things, the Commission considers changes to the regulatory construct for DR. Witness Towslee offers Staff's recommendation that, pending the Commission's actions in that case, UPPCO conform to whatever process has been established for the review and evaluation of any of the Company's potential future DR pilots, programs, and associated expenses. (3 TR 145.)

The Commission subsequently issued an Order in Case No. U-21637 directing utilities and Staff to handle all such DR-related review within the context of rate cases. The Company cites this Order in rebuttal and states its intent to conform to the guidance therein. (3 TR 85.)

#### **IV. Conclusion**

For the reasons stated in this initial brief, and Staff's testimony and exhibits, Staff respectfully requests the Commission adopt Staff's recommendations and changes to the Company's proposed EWR plan and adopt Staff's recommendations related to the 211 platform participation and funding.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE  
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**DATED: March 6, 2026**



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Erin Fielder-Attia

Subscribed and sworn to before me  
this **6<sup>th</sup>** day of **March, 2026**.

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De Ann M. Payne, Notary Public  
State of Michigan, County of Eaton  
Acting in the County of Eaton  
My Commission Expires: 11-29-31