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August 11, 2026

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

Via E-Filing

RE: 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
MPSC No. U-21684

Dear Ms. Felice:

Enclosed for filing in the above-referenced matter please find the Exceptions of Upper Peninsula Power Company to Proposal for Decisions and Motion to Withdraw EFEL Plan and the Proof of Service of same. If you have any questions, please contact me.

Sincerely,

FOSTER SWIFT COLLINS & SMITH PC

Michael G. Oliva
Digitally signed by Michael G. Oliva
Date: 2026.08.11 12:27:42 -04'00'

Michael G. Oliva

MGO:jlk
Enclosures
cc: ALJ Jonathan F. Thoits
All Interested Parties

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	)))))))	Case No. U-21684 Hon. Jonathan F. Thoits Administrative Law Judge

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EXCEPTIONS OF UPPER PENINSULA POWER COMPANY
TO PROPOSAL FOR DECISION AND MOTION TO WITHDRAW EFEL PLAN

Dated: August 11, 2026

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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	)))))))	Case No. U-21684 Hon. Jonathan F. Thoits Administrative Law Judge

EXCEPTIONS OF UPPER PENINSULA POWER COMPANY
TO PROPOSAL FOR DECISION AND MOTION TO WITHDRAW EFEL PLAN

I. INTRODUCTION

Upper Peninsula Power Company ("UPPCO") submits its Exceptions to the Proposal for Decision issued by Administrative Law Judge Jonathan F. Thoits ("ALJ") dated July 21, 2026. As noted in UPPCO's Brief and Reply Brief, there is no basic dispute regarding the reasonableness and prudence of UPPCO's proposed Energy Waste Reduction ("EWR") Plan. The Staff recommends that the EWR Plan be approved, with minor modifications (Staff Brief, pp. 4-6) and SEMCO Gas Energy Company ("SEMCO") took no position on UPPCO's EWR Plan (3 Tr 168 L18-169 L2). The PFD recommends approval of UPPCO's proposed EWR Plan, as modified by Staff's proposals. (PFD p. 50) The focus of the dispute in this case is over the reasonableness and prudence of UPPCO's Efficient Electrification ("EFEL") Plan. Accordingly, these Exceptions will focus on those areas of disagreement. UPPCO submits that the competent, material and substantial evidence on the whole record supports its contention that its mandatory EWR Plan and its voluntary EFEL plan are each reasonable and lawful and should be approved by the Commission.

II. ARGUMENT

A. EXCEPTIONS REGARDING THE PFD'S RECOMMENDATION OF STAFF'S PROPOSED EWR PLAN MODIFICATIONS

Staff proposed two modifications to UPPCO's EWR Plan to which UPPCO objected, but which the ALJ adopted in the PFD. Both Staff proposals should be rejected by this Commission over the PFD's recommendation and UPPCO's EWR Plan approved without those modifications.

EXCEPTION #1 UPPCO's proposal to maintain a 7% pilot program budget should be approved without conditions.

The first modification that Staff recommends that the Commission reduce the budget for pilot spending be reduced from the current 7% level to 5%. Staff states in its Brief that the rationale for the reduction is that the 7% spending level was premised on health and safety and workforce development spending, but that those expenditures are now "stand-alone" programs, justifying the lower pilot expenditure level. (Staff Brief, p. 5) As UPPCO pointed out in its Brief, however, the higher pilot budget is permissible under the Commission's March 28, 2017 Order in Case Nos U-18260[1] *et al* and that UPPCO's testimony shows that the proposed 7% pilot level is reasonable to test, evaluate, and demonstrate measured savings in Michigan while allowing continuity investing in testing new opportunities to capture energy savings through its Pilot Program. (3 Tr 56 L5-11) (UPPCO Brief p. 11) Moreover, in its Brief, Staff states that if UPPCO were to agree to participate in the Michigan 211 Centralized Platform, Staff would agree to maintain the 7% level for the pilot program. (Staff Brief, p. 5) As UPPCO stated in its testimony and Brief, it does agree to participate in the Michigan 211 Centralized Platform, contingent only on the participation of other regulated utility companies in Michigan. (3 Tr 88 L11-12) (UPPCO Brief p. 11) Accordingly, quite apart

[1] *Re Alpena Power Co, et al* MPSC No, U-18260 *et al* (March 28, 2017, p 9)

from establishing that maintaining the pilot program budget at 7% is reasonable on its own, UPPCO has agreed to the condition on which Staff is willing to support the 7% level. The PFD found that UPPCO should participate in the Michigan 211 Proposal regardless of the participation of the other regulated utilities, and that the pilot budget should be reduced to 5% until such time as UPPCO agrees to participate in or the Commission requires UPPCO to participate in the Michigan 211 Proposal, at which point the pilot budget would be restored at the 7% level. (PFD pp. 9-10) The PFD provides no rationale why joining Michigan 211 should be mandatory for UPPCO, even if other utilities do not join. Thus, the PFD's recommendation to reduce the pilot program budget until such time as UPPCO joins the Michigan 211 Proposal should be rejected.

EXCEPTION #2 The MSP pilot should be accounted for in the pilot program budget.

Staff's second proposed modification recommended by the PFD is that the Measured Savings Pilot should not be included in the pilot program budget but instead in the evaluation, measurement and verification ("EMV") spending budget. (PFD p. 9) While the PFD recites the positions of Staff and UPPCO on the issue, the PFD itself provides no reason why it adopted the Staff position versus that of UPPCO other than the conclusory statement that the Measured Savings Pilot is better suited for the EMV budget. Staff's witness did not offer a rationale for that modification other than that "the placement of the program seems better suited for the evaluation, measurement, and verification funding budgets." (3 Tr 129 L10-12) Staff's Briefs provide no more detailed explanation for the recommendation. (Staff Brief, pp. 5-6) As explained in UPPCO's Brief, the Measured Savings Pilot is properly included in the pilot program budget, rather than the EMV budget because the pilot is designed to invest in new and innovative programs with high value. As such, the pilot program is fundamentally different from simply providing rebates for a single technology installation, which is what the EMV budget is designed to track. (3 Tr 87 L13-

88L9) (UPPCO Brief, p. 11) The natural implication of the Staff and PFD's position that the MSP belongs in the EMV budget is that Measured Savings is a mature EMV technology that does not need to be proved via testing in a pilot, in which case UPPCO should be able to use the Measured Savings software for any and all of its programs. Unless that is the position the Commission intends to adopt, the weight of evidence supports UPPCO's proposal rather than Staff's recommended modification, and the recommendation of the PFD should be rejected.

B. EXCEPTIONS REGARDING UPPCO'S EFEL PLAN AND MOTION TO VOLUNTARILY DISMISS EFEL PLAN APPLICATION

UPPCO is the first utility to requested approval of an Efficient Electrification ("EFEL") Plan (PFD p. 18) In no other case filed pursuant to the Commission's November 7, 2024 Order, did any utility file a proposed EFEL Plan. See *Re Alpena Power Co*, No., MPSC. U-21679 (December 18, 2025); *Re Indiana Michigan Power Co.,* MPSC No. U-21682 (February 19, 2026); *Re Northern States Power Co.*, MPSC No. U-21683 (December 18 (2025); *Re Upper Michigan Energy Resources Co.,* MPSC No. U-21685, Proposal for Decision (May 28, 2026); *Re Michigan Gas Utilities Co.,* MPSC No. U-21686 (September 11, 2025); and *Re SEMCO Energy Gas Co.,* MPSC No. U-21687 (June 12, 2025). In one case, the Commission approved a settlement agreement in which Consumers Energy agreed to a collaborative process to develop a multi-year EFEL Plan. *Re Consumers Energy Co*, MPSC No. U-21680 (February 19, 2026). *See* Settlement Agreement ¶14, p. 6. In another the Commission approved a Settlement Agreement in which DTE Electric agreed to consult with the parties in the development of an EFEL Plan. *Re DTE Electric Co and DTE Gas Co*, MPSC No. U-21681 (January 15, 2026). *See* Settlement Agreement ¶7 p. 5. Neither Consumers nor DTE sought approval of an EFEL Plan in their respective Applications. Accordingly, UPPCO's request was a matter of first impression for the parties and the Commission.

In this case, UPPCO's EFEL Plan was opposed by both Staff and SEMCO and the PFD recommended that it be rejected. Following a discussion of the position of the parties on the Plan the PFD made the following recommendations regarding the EFEL Plan proposal:

> *As such, this PFD must adhere to the statutory mandate (and the Commission's similar direction in its February Order) that the EFEL program "shall not" increase electric rates for customers that do not participate in the program.* (PFD p. 43)
>
> *This PFD agrees with Staff that UPPCO is required to demonstrate the cost effectiveness of its EFEL plan*. (PFD p. 46)
>
> *This PFD agrees with Staff that EM&V should be a component of vetting EFEL measures. As the Commission indicated in its November Order, an electric provider should consider providing the results of "one or more cost benefit tests, both pre- and post-plan implementation*. (PFD p. 48)
>
> [Regarding Staff's proposed $1 million cap in the event that the Commission approve the EFEL Plan] *[T}his PFD finds that neither Staff nor SEMCO concede their respective objections to UPPCO's EFEL plan.* (PFD p. 49)
>
> *This PFD also recommends that the Commission reject UPPCO's EFEL plan, while allowing it to file a new EFEL plan which corrects the noted deficiencies of its filed plan.* (PFD p. 50)

EXCEPTION #3 – UPPCO's EEEL Plan does not raise the rates for any non-participating customer.

The PFD erred in failing to find that UPPCO's EFEL Program does not increase electric rates for non-participating customers. Indeed, at this point in time, UPPCO's proposal does not increase rates to any customer. UPPCO proposed to record EFEL program costs as a deferred asset, and then to recover that amortized cost in a future rate case only to the extent that gross margin on the incremental electricity sales produced by the electrification measures would pay for the amortized EFEL costs. Revenue paid by customers participating in the EFEL program for the increased electricity sales due to an electrification measure would pay for the incremental costs of the additional load and pay for the amortized EFEL program costs (3 Tr 92 L11-20) UPPCO complies with the requirement not to increase "electric rates for customers that do not participate in the program" by (1) limiting EFEL program costs for each electrification measure to an amount that would be recovered on a net present value basis through incremental distribution revenue on the increased sales due to the EFEL program, and (2) amortizing EFEL program costs out of the deferred asset account into utility expenses at a rate concurrently covered by the incremental distribution revenue on the increased sales due to the EFEL program. Alignment in time of cost recovery for EFEL program expenditures with the incremental electricity sales due to the EFEL program, thereby achieves compliance with the statutory requirement that the EFEL program not increase electric rates for customers that do not participate in the program. (3 Tr 93 L 3-17) The initial impact of rates under UPPCO's EFEL Plan will be determined by the Commission in future proceedings. In Case No. U-21567, the Commission directed that "these costs will be recovered via a separate surcharge that will be added to the applicable EWR surcharge for purposes of including it on customer bills." *Re Implementation of 2023 PA 229* MPSC Case No. U-21567 (February 8, 2024 p. 3).

EXCEPTION #4 – UPPCO demonstrated the cost-effectiveness of its EFEL Proposal.

The PFD erred in failing to find that UPPCO demonstrated the cost effectiveness of its plan. UPPCO's case includes specific calculations of cost-effectiveness for each electrification measure by type and customer class set forth in the tables in Section 5 of Exhibit A-1. Table 5.1 shows measures considered in the analysis. Tables 5.3, 5.4, 5.5, and 5.6 screen measures that use less on-site energy than their fossil-fuel-based alternatives and produce 10 less greenhouse gas emissions on a life-cycle basis. Table 5.7 shows how measures were screened to ensure that they provide bill savings to participating customers. Tables 5.8, 5.9, 5.10, and 5.15 calculate the maximum program spending consistent with not increasing rates for non-participating customers.

Every remaining measure provided a health and safety benefit or net bill savings to the participating customers while not increasing costs to non-participating customers. Tables 5.8, 5.9, 5.10, and 5.15 provide estimates of bill savings as the net of increased electricity purchases and reduced fossil fuel purchases, estimated measure cost to the customer and net measure cost to the customer after UPPCO and MiHER rebates (when applicable). Staff does not identify any element of costs or benefits that they consider are necessary to make a determination of net benefits to the participating or non-participating customers that were not accounted for. (3 Tr 99 L12-100 L13) Staff's questions regarding the screening method for induction cooktops are not well-taken because the Act is clear that health and safety effects including greenhouse gas emission reductions are appropriate criteria for an EFEL program regardless of on-site energy reduction. (3 Tr 103 L14-104 L 16)

EXCEPTION #5 – There is no statutory requirement to include EM&V as part of an EFEL Plan.

The PFD adopts Staff's position that UPPCO be required to include evaluation, measurement, and verification (EM&V) as part of its EFEL Plan. Contrary to Staff's contention, there is no statutory requirement for EM&V in an EFEL Plan like there is for EWR programs. UPPCO's EFEL Plan includes custom analysis of every measure before implementation, the only plausible role of EM&V is to determine if fossil-fuel savings and increased electricity sales are consistent with those modeled in the pre implementation analysis. After the pilot phase of the Measured Savings program, presentation of pilot results, and discussion with Staff UPPCO will consider using the Measured Savings tools for this purpose with appropriate cost allocation to the EFEL program. But that cannot be done until the Measured Savings pilot is completed so that appropriate baselines and measurements of change are available for this analysis. (3 Tr 102 L 4-

21) Staff references the importance of the MEMD in EM&V for EWR programs and notes that in Case No. U-21567 the Commission directed that EFEL measures be housed in the MEMD as the "most reasonable place to appropriately vet and incorporate EFEL measures and the values necessary to assist the development of EFEL plans." Although UPPCO concurs, UPPCO has no power or authority to add EFEL measures to the MEMD. It will work with Staff to pursue that goal, but it cannot do so unilaterally. (3 Tr 99 L12-100 L13)

EXCEPTION #6 AND MOTION TO VOLUNTARILY DISMISS EFEL PLAN APPLICATION.

UPPCO Excepts to the PFD's recommendation that its EFEL Plan be rejected. UPPCO maintains that its EFEL Plan is reasonable and supported by the evidence, and that it is willing to accept the $1 million cap for the initial year of the Plan proposed by Staff, with the cap to be revisited as the program evolves and develops. However, in light of the parties' positions and the PFD's recommendation, UPPCO moves to voluntarily dismiss that portion of its Application seeking approval of its EFEL in this case, without prejudice, pursuant to Section 78(2) of the Michigan Administrative Procedures Act ("APA"), 1969 PA 306, §78(2); MCL 24.278(2), Rules 403(1) and 432 of the Commission's Rules of Practice and Procedure R792.10403, R792.10432 and MCR 2.504(A)(2).

Section 78(2) of the APA authorizes the disposition of any contested case proceeding "by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties". The Commission's Rules of Practice and Procedure do not include a provision for the voluntary dismissal of an application or complaint, and thus, pursuant to Rule 403(1), the applicable rules of the Michigan Court Rules may be applied. MCR 2.504(A)(2) provides that, absent a stipulation by all parties for dismissal[2], voluntary dismissal by the plaintiff of a complaint may only be granted after it has been served or an answer filed upon order of the court. Such dismissal is without prejudice unless otherwise ordered by the Court.

The Commission has followed that practice, holding that an application may only be voluntarily withdrawn once filed by order of the Commission. In *Re Wolverine Power Supply Cooperative*, MPSC No. U-13739 (June 5, 2003), the Commission held:

> *It is well established that an applicant cannot withdraw from an administrative proceeding without permission to do so. Once an application has been filed, the decision rests with the Commission on whether the matter may be withdrawn. See the April 26, 1988 Order in Case No. U-8643 and the April 23, 1999 Order in case No. U-11936.*

(June 5, 2003 Order, p. 2)[3]

While in that case and the cases cited therein, as well as more recently in *Re CMC Telecom and Interne*t Inc. MPSC No. U-18483 (October 24, 2018) the Commission denied the requests to unilaterally withdraw an application, in other cases, the Commission has permitted the voluntary dismissal of an application or complaint, without prejudice. *Re Universal Telecom et al*, MPSC No. U-13987 (March 16, 2004); *Re Seaway Painting v MCI Worldcom Communications*, MPSC No. U-12863 (June 5, 2001).

The Commission has granted voluntary dismissal even after the issuance of an adverse Proposal for Decision in a case and over the objection of other parties to the case. *Re SEMCO Gas Energy Co*, MPSC No. U14649 (April 25, 2006), where the Commission analyzed at length its authority to grant a voluntary dismissal of an application, and permitted SEMCO to withdraw its

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[2] UPPCO's counsel requested a stipulation for voluntary dismissal of its request for approval of its proposed EFEL Plan, but could not obtain the consent of counsel for Staff and SEMCO.

[3] The referenced cases *are Re Consumers Power Co*, MPSC No. U-8643 (April 26, 1988) and *Re Focal Communications Corporation of Michigan v Ameritech Michigan*, MPSC No., U-11936 (April 23, 1999)

application in the case after an oral PFD recommended grant of summary disposition denying the application:

> *<u>Discussion</u>*
>
> *The only issue for Commission decision is whether to grant SEMCO's request to withdraw its application with or without prejudice. The Staff's position is very simple; the application should be dismissed with prejudice. The Attorney General's position is more complex and involves his concern regarding whether this application will appear on the Commission's docket again.*
>
> *<u>The Attorney General</u>*
>
> *Contrary to the Attorney General's argument, MCL 24.201 et seq. (the Administrative Procedures Act) does not require that a voluntary dismissal be made with prejudice if less than all of the parties stipulate to the request to withdraw the filing without prejudice. Specifically, MCL 24.278(2) provides that "(e)xcept as otherwise provided by law, disposition <u>may</u> be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties."[13] The statutory language is permissive and does not mandate an agreement by all parties in order for the Commission to grant a voluntary dismissal without prejudice.*
>
> *Likewise, an ALJ cannot make a dispositive decision unilaterally. The full Commission must ratify any recommendation that the ALJ may issue before it becomes binding. R 460.17323 states that:*
>
>> *If the [ALJ] determines that there is no genuine issue of material fact or that there has been a failure to state a claim for which relief can be granted, the [ALJ] may <u>recommend</u>,[14] to the commission, summary disposition of all or part of the proceeding. If the entire proceeding is disposed of, the [ALJ] shall issue a proposal for decision.*
>
> *(Emphasis added). While an oral PFD was reached by the ALJ, the Commission took no action upon it and did not issue an order on the matter.*
>
> *Furthermore, the Commission cannot force SEMCO to withdraw its application subject to specific terms and conditions imposed by the Commission. If the Commission grants SEMCO's request to withdraw the application but does so with prejudice in contradiction to SEMCO's request, "[t]he final choice whether to accept the conditions imposed by the [Commission] lies with [SEMCO]." Gawrych v Rubin, unpublished opinion per curiam of the Court of Appeals, decided October 26, 2004, Docket No. 247744, citing Mleczko v Stan's Trucking, 193 Mich App 154, 156; 484 NW2d 5 (1992). Therefore, "a party seeking a voluntary dismissal must*

be given a choice to either proceed to trial or accept dismissal on the terms and conditions established by the trial court." Id., citing McKelvie v Mt Clemens, 193 Mich App 81, 86; 483 NW2d 442 (1992).

The standard for granting a dismissal with prejudice was best stated by the Michigan Court of Appeals:

> *[I]n exercising [its] discretion [to grant or deny a voluntary dismissal] the trial judge is to weigh the competing interests of the parties along with any resultant inconvenience to the court from further delays. Normally, such a motion should be granted unless [the] defendant will be legally prejudiced as a result.*

Lynaum v Coleman, unpublished opinion per curiam of the Court of Appeals, decided September 25, 2001, Docket No. 221103.

The Attorney General argues that he would be disadvantaged if the Commission granted SEMCO's request without prejudice because of the time and energy the Attorney General has expended in this case thus far. Whatever time and energy the Attorney General has expended in this matter could be utilized by the Attorney General again should SEMCO choose to re-file its application at a later date. Not only does the Attorney General fail to proffer an argument that would meet the legal prejudice standard, but allowing SEMCO the possibility of re-filing its application would serve to protect its due process rights since a final decision on the case was never made by the Commission.15 Furthermore, the Commission has the discretionary authority to dismiss an application without prejudice where justice would be served by doing so. Therefore, SEMCO's request to withdraw its application is in the public interest and should be granted without prejudice.

Re SEMCO Gas Energy Co, MPSC No. U14649 (April 25, 2006) pp5-7 [Footnotes omitted]

Accordingly, UPPCO requests that the Commission approve its motion to withdraw and voluntarily dismiss that portion of its application in this case seeking approval of its EFEL Plan, without prejudice to the filing of a new Plan in a future Application. No party would be prejudiced by grant of the motion, since the position of Staff, SEMCO and the PFD the parties is that the EFEL Plan should not be approved in this case, but that UPPCO can file a new EFEL Plan in a future proceeding. UPPCO can do so, being informed and mindful of the positions of the parties in this case.

III. CONCLUSION AND RELIEF

The Commission should approve UPPCO's 4-year Energy Optimization Plan as reasonable and lawful and supported by the weight of the evidence in this case, including UPPCO's Energy Waste Reduction ("EWR") plan and related surcharges, as modified by its agreement with Staff's suggestions, and reject those modifications to which UPPCO has objected and filed Exceptions as discussed above.

Although UPPCO believes that its Efficient Electrification Measures ("EFEL") Plan and related deferred regulatory asset, again as modified by its agreement with Staff, is reasonable and lawful and supported by weight of the evidence, UPPCO requests that the Commission approve its motion to withdraw and voluntarily dismiss that portion of its Application in the case seeking approval of the EFEL Plan, without prejudice to filing a new EFEL Plan in a future Application.

UPPER PENINSULA POWER COMPANY

Dated: August 11, 2026

By Michael G. Oliva
Digitally signed by Michael G. Oliva
Date: 2026.08.11 12:28:12 -04'00'

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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.	)	Case No. U-21684 Hon. Jonathan F. Thoits Administrative Law Judge

PROOF OF SERVICE

TO: PARTIES OF RECORD

Jennifer Knox deposes and says that on August 11, 2026, she served a copy of the Exceptions of Upper Peninsula Power Company to Proposal for Decision and Motion to Withdraw EFEL Plan and this Proof of Service via email on the following persons:

Michigan Office of Administrative Hearings and Rules
For the Michigan Public Service Commission

Jonathan F. Thoits Administrative Law Judge	Thoitsj@michigan.gov

Michigan Public Service Commission Staff

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