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Timothy J. Lundgren

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October 8, 2018

Ms. Kavita Kale
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, Michigan 48909

Re: MPSC Case No. U-20134

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find the Michigan Energy Innovation Business Council's Response in Opposition to Consumers Energy Company's Motion to Strike the Direct Testimony and Exhibits of witness Laura Sherman, as well as Proof of Service. Thank you for your assistance in this matter.

Sincerely yours,

VARNUM
Timothy
Lundgren

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Timothy J. Lundgren

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Enclosures

c. ALJ

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)
electricity and for other relief)
_____)

Case No. U-20134

**MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL
RESPONSE IN OPPOSITION TO THE MOTION TO STRIKE THE DIRECT
TESTIMONY AND EXHIBITS OF WITNESS LAURA SHERMAN FILED BY
CONSUMERS ENERGY COMPANY**

On October 4, 2018 Consumers Energy Company ("Consumers") filed a Motion to Strike the Direct Testimony and Exhibits of Michigan Energy Innovation Business Council witness Laura Sherman ("Motion to Strike"). Pursuant to Rule 432 of the Michigan Public Service Commission's ("MPSC" or the "Commission") Rules of Practice and Procedure, R 792.10432, Michigan Energy Innovation Business Council ("Michigan EIBC") files this Response in Opposition to Consumers' Motion.

I. RESPONSE TO MOTION

Consumers seeks to strike the pre-filed Direct Testimony and Exhibits of Michigan EIBC witness Dr. Laura Sherman in their entirety because Consumers alleges that, "they are irrelevant and beyond the scope of the matters considered in this electric general rate case proceeding." (Motion to Strike, p. 2). Rule 401 of the Michigan's Rules of Evidence states that "Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be

without the evidence.” MRE Rule 401. Consumers complains that Dr. Sherman's Testimony and Exhibits are, "neither material nor probative of any issue in this case" because they "are not of consequence to any of the retail electric rate issues considered in this proceeding." See Motion to Strike, pp. 2-3.

Consumers' Motion to Strike leaves the impression that the utility's rate request has nothing to do with its interconnection processes. Of course, a simple search for the word "interconnection" in Consumers' pre-filed Testimony shows that "New Interconnections" is one of the five cost categories in Consumers' request for HVD lines and substation investment. Specifically, witness James R. Anderson identifies \$5,810,000 in capital investment that the utility is seeking in this proceeding for "New Interconnection." See James R. Anderson, Direct Testimony, p. 56, Figure 10. Mr. Anderson describes this category as follows: "[t]he New Interconnection category contains new interconnections to LVD substations, other utilities, and generation facilities that must be completed as requested by the interconnecting party. Costs to interconnect other utilities and generation facilities to our HVD system are reimbursed by the other utilities or generators being interconnected."¹ James R. Anderson, Direct Testimony, p. 55. These projected interconnection investments are factored into the capital expenditures that the utility is seeking to have approved in this proceeding, as is apparent from the Q&A on p. 57 of Mr. Anderson's Direct Testimony:

- Q. Are the capital expenditures related to HVD Lines and Substations capacity reasonable, prudent, and provide benefits to customers?
- A. Yes. The projected test year amount provides for the necessary level of HVD capacity investment needed to support HVD lines and substations

¹ The fact that the costs may ultimately be reimbursed does not, of course, exempt Consumers' projected estimates for which they are seeking rate recovery from review by the Commission and other parties, including Michigan EIBC, for their reasonableness.

capable of meeting the Company's planning criteria to ensure adequate and reliable capacity and voltage to serve our customer through anticipated HVD system conditions. Additionally, **these investments are necessary to support new LVD substation interconnections**, improve functionality, coordinate with transmission, and procure necessary land and ROW. Additionally, these investments support the Company's objective of 120 SAIDI minutes (excluding MEDs) in 2022, as discussed later in my testimony.

Anderson Direct Testimony, p. 57 (emphasis added).

Consumers' witness Andrew J. Bordine not only concurs with the view of Mr. Anderson that the substation interconnection process is in need of significant new capital investment, but notes that the O&M spending that is being sought in this proceeding also includes money that goes to the generator interconnection and operating agreement and the generator interconnection process:

- Q. Please explain the Agreements – LVD and HVD line item as shown on Exhibit A-49 (AJB-16), page 2, line 5.
- A. **This represents the O&M spending to administer** the following agreements and processes: wholesale distribution service, extraordinary facilities agreements, facilities agreements, **generator interconnection and operating agreements, generator interconnection process**, and Federal Energy Regulatory Commission Electric Quarterly Reporting.

Andrew J. Bordine, Direct Testimony, p. 153 (emphasis added). The inclusion of significant interconnection process investment and O&M amounts in the utility's requested recovery in this rate case makes the topic of its current interconnection process extremely relevant and material to its filing, and consequently Dr. Sherman's discussion of the efficiency, transparency and cost-effectiveness of that process is extremely probative.

Consumers complains in its Motion to Strike that Dr. Sherman's Direct Testimony "does not mention any aspect of the Company's filing at all." Motion to Strike, p. 3. It is, of course, unnecessary that she do so. As an expert, Dr. Sherman is able to call the Commission's attention

to general principles and to outside evidence that should be considered in the context of the utility's proposal. Thus, the Michigan Court of Appeals remarked in *Agee v Williams*, 17 Mich App 417; 169 NW2d 676 (1969) on the role of the expert:

As a general proposition, expert testimony is admissible and constitutes an exception to the general rule which confines a witness to a recitation of facts. The testimony of an expert witness (if he is in fact an expert) is admissible as evidence against the objection that it is conjectural or speculative or that it is a conclusion for the reason that the expert has peculiar knowledge or special experience which ordinary jurymen do not possess and that his testimony will, therefore, enable them to understand facts which will be developed by other evidence. The jury judges the weight which they deem the testimony should receive.

Agee, 17 Mich App at 422-423. As the court affirmed, expert opinions are neither speculative nor irrelevant because they discuss general principles and background requirements. Instead they are the product of accepted scientific and technical knowledge and the Commission should be permitted to hear them and decide how much weight to give them. Michigan EIBC intends to apply the principles set forth here by Dr. Sherman to what Consumers has requested in its filing when it files its Brief, making there its argument to the Commission for how the utility's request for relief should be treated. It is not obligated to make those arguments in its testimony (indeed, it may well be improper for it to do so), despite Consumers' desire that it do so.

Consumers remains free to dispute the opinions of Michigan EIBC's expert through rebuttal testimony,² through cross-examination and in its briefing. What it should not be allowed to do is bar Michigan EIBC from offering expert opinions that reflect on the reasonableness of requests that Consumers is making in its rate case, thus depriving other parties, this Tribunal, and the Commission of expert views on a significant investment cost for which it is seeking recovery.

² It is noteworthy that Consumers filed Rebuttal Testimony to Dr. Sherman via witness Theresa K. Martinez. Thus, Consumers has already responded to Dr. Sherman's Testimony and so has had the opportunity to argue the relevancy and merit of Dr. Sherman's Testimony and Exhibits.

Consumers asserts that Dr. Sherman "actually concedes that the Company follows Commission-approved interconnection rules, and that the Company is not out of compliance with any of the current Interconnection Standards or procedures approved by the Commission." Motion to Strike, p. 4. For this apparently sweeping endorsement of Consumers' interconnection practices, the utility cites Dr. Sherman's Direct Testimony broadly, at "pages 5-18." *Id.* Counsel for Michigan EIBC has been unable to find the same assurances in those pages that Consumers has found. The closest language appears to be the following Q&A:

- Q. Is Consumers Energy in compliance with Michigan's current administrative rules regarding interconnection?
- A. As far as I know they are, in large part. However, as required under current administrative rules (R 460.601a – R 460.656), uniform interconnection procedures, agreements, and application forms were never approved for projects larger in size than 150 kW. In case No. U-15919, in August 2009, Consumers Energy, DTE Energy, the Michigan Electric and Gas Association, on behalf of its electric utility members and the Michigan Electric Cooperative Association, on behalf of its members, filed a joint application for approval of proposed uniform interconnection procedures, agreements, and application forms. On December 20, 2012 in that same case, the Commission approved the uniform interconnection procedures, agreements, and application forms for Category 1 projects (<20 kW) and Category 2 projects (20 kW – 150 kW).

Direct Testimony, p. 18. It is also worth noting that in the Direct Testimony that precedes this Q&A, Dr. Sherman also notes that, according to data from Consumers' own interconnection queue, timelines may have been exceeded for a number of Category 4 and 5 projects submitted over the last 18 months,³ and she also testifies that Michigan industrial customers, developers and installers have significant concerns about interconnection delays.⁴ Consumers is correct that Dr. Sherman's testimony does not contain allegations of direct violations of the Interconnection

³ Direct Testimony, p. 6.

⁴ Direct Testimony, p. 8.

Standards by Consumers, as this is not a complaint filing. Instead, Dr. Sherman's Testimony and exhibits are expert testimony on the subject of the adequacy of Consumers' interconnection process for which it is seeking additional investment. In that context, the testimony and exhibits, and the general critique of Consumers' interconnection process, provided by Dr. Sherman are entirely appropriate.

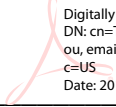
II. REQUEST FOR RELIEF

WHEREFORE, Michigan EIBC respectfully requests the Administrative Law Judge and the Michigan Public Service Commission deny Consumers' Motion in its entirety.

Respectfully submitted,

Varnum LLP
Attorneys for the Michigan Energy
Innovation Business Council

October 8, 2018

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

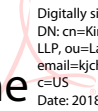
In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for authority to increase its rates for)
the generation and distribution of)
electricity and for other relief)
_____)

Case No. U-20134

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Kimberly Champagne, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 8th day of October, 2018, she served a copy of the Michigan Energy Innovation Business Council's Response in Opposition to Consumers Energy Company's Motion to Strike the Direct Testimony and Exhibits of witness Laura Sherman and this Proof of Service upon those individuals listed on the attached Service List via email at their last known addresses.

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