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***VIA ELECTRONIC CASE FILING***

Ms. Barbara Kunkel  
Acting Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, Michigan 48917

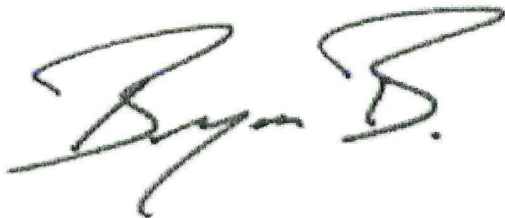
**Re: *MPSC Case No. U-20350: In the matter of the application of Upper Peninsula Power Company for approval of its integrated resource plan pursuant to MCL 460.6t and for other relief.***

Dear Ms. Kunkel:

Enclosed for filing please find the *Association of Businesses Advocating Tariff Equity's Reply Brief (public version)* in the above-referenced matter.

Sincerely,

CLARK HILL PLC



Bryan A. Brandenburg

BAB/tlb

cc w/enc.: Parties of Record

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

\* \* \* \* \*

In the matter of the application of <b>UPPER</b>	)	
<b>PENINSULA POWER COMPANY</b> for	)	Case No. U-20350
approval of its integrated resource plan pursuant	)	
to MCL 460.6t and for other relief.	)	Hon. Martin D. Snider
	)	

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**ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY'S  
REPLY BRIEF**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by its attorneys, Clark Hill PLC, hereby files its Reply to the Initial Briefs of the Upper Peninsula Power Company (“UPPCO” or “Company”) and the Michigan Public Service Commission (“Commission”) Staff (“Staff”) in accordance with the schedule established by Administrative Law Judge (“ALJ”) Martin D. Snider.

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## I. INTRODUCTION

UPPCO's primary planning objective in this case has been to create "a well-diversified, balanced portfolio of energy and capacity resources." UPPCO Initial Br, p 7. In pursuit of this objective, UPPCO approached the IRP process with a focus on certain goals:

- *Committing to using clean and sustainable energy sources;*
- *Maintaining stable pricing to the greatest extent possible;*
- *Maximizing the value of existing hydro generation resources;*
- *Engaging in robust competitive bidding processes; and*
- *Performing rigorous and thorough analyses.<sup>1</sup>*

While these may be laudable considerations, the Commission should not assume that the ends necessarily justify the means. An IRP is, by definition, about developing a resource *plan*. Different utilities will, of course, have varying objectives in mind when they file a proposed IRP, but their respective agendas are largely irrelevant to the Commission's ultimate determinations. This is so because Public Act 341 of 2016 ("Act 341"), which governs integrated resource planning, is agnostic when it comes to the composition of proposed resource portfolios, as long as they comply with existing laws and regulations and are deemed the "most reasonable and prudent" means of meeting future energy and capacity needs.

For example, UPPCO (or any utility for that matter) is free to file a resource plan that reflects a firm commitment to using clean and sustainable energy sources. Likewise, there are no statutory impediments to UPPCO proposing to re-invest in one asset class, such as its existing hydro generation resources, while simultaneously seeking to retire other generation resources, such as the oil-fired combustion turbine at its Portage facility. UPPCO's motivations for pursuing these goals are inconsequential in the context of assessing the reasonable and prudence

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<sup>1</sup> See UPPCO Initial Br, p 7; UPPCO also stressed the importance of "engaging and incorporating stakeholder input through meetings with the Company's customers, other interested parties, and Staff and incorporating that feedback where appropriate." *Id.*

of the overall plan. Instead, the Commission must consider numerous quantitative and qualitative factors, including *competitive pricing*, *reliability*, *commodity price risks*, and *diversity of generation supply*, before determining whether UPPCO's plan is actually the "most reasonable and prudent" means of meeting future energy and capacity needs. MCL 460.6t(8)(a). With that in mind, the Commission previously stressed that it is "essential" that utilities "fully evaluate" all resource options prior to seeking a reasonable and prudence determination from the Commission. MPSC Case No. U-18418, 11/21/17 Order, p 88.

A fair reading of the evidentiary record in this case precludes the Commission from finding that UPPCO's proposed IRP is the **most** reasonable and prudent option when it comes to meeting its future energy and capacity needs. This is a consequence of UPPCO falling short of meeting the filing and modeling requirements that the Commission adopted in Case Nos. U-18418 and U-18461, which were held pursuant to Act 341. MCL 460.6t(1). As the Commission has recognized, "[e]stablishing the new IRP process was a major undertaking" that required "significant efforts" by the MPSC Staff, various stakeholders, the Michigan Agency for Energy, and the Michigan Department of Environmental Quality. MPSC Case No. U-18418, 11/21/17 Order, p 87. By failing to meet the Commission's regulatory standards, the evidentiary record is insufficient to support a finding that UPPCO's IRP is the most reasonable and prudent resource plan for purposes of Act 341. Therefore, the Commission is left with two choices: (1) recommend changes to UPPCO's IRP pursuant to MCL 460.6t(7); or (2) reject the plan entirely pursuant to MCL 460.6t(9). If the Commission elects the former, ABATE suggest that the Commission should propose amendments that are consistent with those described in ABATE's testimony and legal briefs.

## II. ARGUMENT

### A. The Black & Veatch Report is unreliable on its face and deserves little, if any, weight in this proceeding.

#### 1. The Black & Veatch Report includes multiple statements that deserve the Commission's attention and scrutiny.

UPPCO engaged Black & Veatch Ltd. of Michigan, LLC (“Black & Veatch”) to assist in the development of an IRP that facilitates the selection of future supply options. UPPCO Initial Br, p 21. It is notable that UPPCO contracted with Black & Veatch to perform both *evaluation and modeling* services in conjunction with its resource plan. *Id.* As such, it is irrefutable that UPPCO relied on the Black & Veatch Report to substantiate or support nearly *every* aspect of its IRP.<sup>2</sup> This fact will prove to be an insurmountable impediment to the Commission approving UPPCO’s proposals in this case.

UPPCO says in its Initial Brief that “Black & Veatch modeled several scenarios<sup>3</sup>, each considering different methods to meet UPPCO’s energy, capacity, and RPS needs through different combinations and permutations of new generation and PPAs.” *Id.* According to UPPCO, “each of these scenarios was compared to each other, as well as the [Business as Usual] Base case, on a Cumulative Present Worth Calculation (‘CPWC’) basis to determine **the least-cost option.**” *Id.* (emphasis added). In doing so, the Black & Veatch Report “describes the analyses conducted and the underlying assumptions that produced a 20-year resource plan that will meet UPPCO’s energy and capacity requirements.” *Id.* In terms of process, UPPCO notes that “Black & Veatch’s first step was to characterize existing generating resources to understand the system conditions and characteristics, including performance, costs, and reliability.” *Id.* Next,

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<sup>2</sup> Black & Veatch compiled its findings and recommendations regarding UPPCO’s proposed IRP in a 156-page study that the parties may refer to as the “Black & Veatch Report,” the “Report,” or simply Exhibit A-1.

<sup>3</sup> This includes the three modeling scenarios required by Section VIII of the Michigan Integrated Resource Planning Parameters (“MIRPP”): Business as Usual Scenario, Emerging Technologies Scenario, and High Market Price Variant Scenario.

Black & Veatch identified future goals and constraints pertaining to “retirement plans, upgrades, environmental considerations, fuel diversity, reliability constraints, and other goals or concerns.”

*Id.*

The structure of the Black & Veatch Report, however, is misleading. It’s no coincidence that these factors closely resemble those outlined in Act 341. Specifically, Section 6t(8) mandates that the Commission consider several factors in assessing the reasonableness of a resource plan:

- *Resource adequacy and capacity to serve anticipated peak load;*
- *Compliance with applicable laws;*
- *Competitive pricing;*
- *Reliability;*
- *Commodity price risks;*
- *Diversity of generation supply; and*
- *Levels of peak load reduction and EWR are cost effective.*<sup>4</sup>

UPPCO purposefully draws the Commission’s attention to these common features to lend credibility to the Black & Veatch Report. Presumably, this is because UPPCO believes the Commission will look more favorably upon its proposals if Black & Veatch had the relevant statutory requirements in mind throughout the IRP development process. In reality, UPPCO’s systematic reliance on Black & Veatch’s findings ended up producing an IRP riddled with pervasive interdependencies. More than that, UPPCO unreasonably latched onto the Black & Veatch Report even though its authors disavowed their own conclusions and recommendations. As such, the Commission must first make a determination regarding the sufficiency and reliability of the Black & Veatch Report before it can assess the reasonableness of UPPCO’s proposals.

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<sup>4</sup> See MCL 460.6t(8)(a)(i)-(vii).

Throughout this case, UPPCO has maintained that it conducted a “comprehensive assessment of the Company’s energy and capacity needs” using the planning objectives set forth by the Commission to develop its Proposed Course of Action (“PCA”). UPPCO Initial Br, pp 1-2. According to UPPCO, the Commission should approve the PCA in its entirety because it “represents the most reasonable and prudent means of meeting UPPCO’s energy and capacity needs throughout the planning period.” *Id.* at 2. Again, the evidentiary record should lead the Commission to find otherwise. In fact, if the Commission approves UPPCO’s resource plan without amendment, it will do so in contravention of the Michigan Rules of Evidence and a long line of legal precedent. This is due, in part, to the fact that UPPCO based its entire *case* on the Black & Veatch Report. Notably, the Black & Veatch Report contains recommendations that, if adopted, will affect utility rates in Michigan’s Upper Peninsula for decades. Therefore, it should give the Commission great pause that the Black & Veatch Report also includes statements that clearly disclaim and renounce the very recommendations that UPPCO is arguing for in this case.

ABATE raised this issue in its Initial Brief, but does so again here given the significance of this precedential proceeding. Recall that the “Special Notice” section of the Black & Veatch Report contains several express declarations related to the underlying data and assumptions that the authors of the Black & Veatch Report relied upon in developing their recommendations and conclusions. For example:

- *Black & Veatch does not guarantee the accuracy of the information, data, or opinions contained in the Report.*
- *Black & Veatch based the Report on information outside of its control.*
- *Black & Veatch assumed that the information it received from others, including verbal communications, was complete and correct.*
- *Black & Veatch does not represent or warrant that the information contained in the Report is sufficient or appropriate for any purpose.*

- *Black & Veatch can offer no guarantee or assurances that any facts, observations, analysis, projections, opinions, or other matters contained in the Report will be more accurate, either at the time the Report is issued or at any other time.*
- *UPPCO acknowledges and agrees that it is not feasible for Black & Veatch to conduct a comprehensive investigation or make definitive determinations for the compensation provided.*<sup>5</sup>

These statements go well-beyond typical legal disclaimers and effectively undercut the specific proposals comprising UPPCO’s PCA and its IRP in general. The vast majority of these proposals depend on the modeling that Black & Veatch performed on behalf of UPPCO. Therefore, it is critical that the Commission appreciate just how much UPPCO relies on the Black & Veatch Report to justify its proposals. ABATE seeks to illustrate this point with the table below, which identifies some of UPPCO’s primary requests along with corresponding statements from UPPCO’s Initial Brief that draw from the Black & Veatch Report for support:

UPPCO’s Reliance on Black & Veatch Report	
<b>125 MW Solar PPA</b>	<ul style="list-style-type: none"> <li>◦ <i>“UPPCO issued the solar RFP because the Black &amp; Veatch Report determined that solar would be a more cost-effective source of generation than other technologies, including wind.”</i> UPPCO Initial Br, p 61.</li> <li>◦ <i>“Black &amp; Veatch ultimately concluded that the 125 MW Solar + RICE scenario was the most reasonable and prudent plan based upon reliability and diversity considerations.”</i> <i>Id.</i> at 25.</li> <li>◦ <i>“As evidenced in Black &amp; Veatch’s Report in Section 10, the 125 MW Solar PPA came back with the least cost CPWC.”</i> <i>Id.</i> at 29.</li> <li>◦ <i>“UPPCO did not reflect Mr. Moore’s criticisms of 20% “owner’s cost” construction cost uplift used in the Black &amp; Veatch modeling nor did UPPCO accept Mr. Moore’s claim that the cost of wind power is expected to decline at the same rate as the cost of solar power.”</i> <i>Id.</i> at 48.</li> </ul>
<b>20 MW RICE unit</b>	<ul style="list-style-type: none"> <li>▪ <i>“The RICE 2022 component of the PCA was selected by the Black &amp; Veatch model.”</i> <i>Id.</i> at 33.</li> <li>▪ <i>“Black &amp; Veatch ultimately included the RICE unit in the PCA due because it was expected to provide additional operational flexibility and reliability for a marginal cost increase.”</i> <i>Id.</i> at 34.</li> <li>▪ <i>“Black &amp; Veatch believes that the additional energy source variety and firm, quickly dispatchable generation from a 20 MW RICE unit would be a favorable tradeoff for a relatively higher CPWC than the BAU Solar PPA 125 without a RICE.”</i> <i>Id.</i></li> <li>▪ <i>“UPPCO selected the RICE 2022 project because (i) it was the most cost-effective dispatchable</i></li> </ul>

<sup>5</sup> ABATE rephrased certain statements and added emphasis for purposes of clarity, but did not alter the original meanings or sentiment of any of the disclaiming statements. See Exhibit A-1, p 2.

	<i>technology, as determined by the Black &amp; Veatch modeling.” Id. at 48.</i>
<b>Increase EWR target to 1.5%</b>	<ul style="list-style-type: none"> <li>◦ <i>“UPPCO did not select a larger EWR target for its IRP because additional EWR activities were not selected by the Black &amp; Veatch model as a cost-effective solution.” Id. at 55.</i></li> </ul>
<b>Replace Portage with RICE unit</b>	<ul style="list-style-type: none"> <li>▪ <i>“The B&amp;V modeling performed on behalf of the Company did include a simple-cycle CT as a resource option, which the model was able to select if it was determined to be cost effective in any scenario run. Upon reviewing the results, it was noted that the CT resource option was not economically selected in any pertinent scenario.” Id. at 46-47.</i></li> <li>▪ <i>“Black &amp; Veatch is of the opinion that from a capacity resource mix the BAU Solar PPA 125 + RICE PCA case is the most diverse and therefore the least risky.” Id. at 25.</i></li> </ul>
<b>Need for additional resources</b>	<ul style="list-style-type: none"> <li>◦ <i>“Based on the modeling conducted by Black &amp; Veatch, under the Business As Usual (‘BAU’) Base Case scenario, UPPCO currently has sufficient existing and near-term capacity resources to meet its projected peak demand and planning reserve requirements over the study period without the need to procure additional capacity, as well as RPS requirements. However, UPPCO will require additional energy resources to have less of a reliance in the wholesale and spot market in order to improve reliability and mitigate market risk for its customers.” Id. at 19.</i></li> </ul>
<b>Modeling required by the MIRPP</b>	<ul style="list-style-type: none"> <li>▪ <i>“The fundamental market model was created by using the PROMOD IV cost model, which allowed Black &amp; Veatch to look at hourly production costs to project costs to meet power supply needs, which included assumptions on long-term planning for hourly loads, economically dispatching units based on hour generation output and costs, and chronological constraints, such as ramp rates.” Id. at 18.</i></li> <li>▪ <i>“The final step was for Black &amp; Veatch to use the economic analysis and other models to determine the optimal generation resource portfolio based on the lowest cost portfolio which meets power supply needs and strategic objectives.” Id.</i></li> <li>▪ <i>“Transmission carrying capacity information provided by UPPCO and Black &amp; Veatch’s PROMOD modeling confirmed that UPPCO’s existing transmission rights are adequate to fully dispatch the generation considered in each of the IRP scenarios modeled, and therefore transmission upgrades are not required to realize the benefits of those scenarios.” Id. at 21.</i></li> <li>▪ <i>“Black &amp; Veatch then identified the five most cost-effective scenarios and conducted additional analyses to identify the most reasonable and prudent plan.” Id. at 24.</i></li> </ul>

To be clear, this is far from exhaustive in terms of identifying all of UPPCO’s references to the Black & Veatch Report. For example, the table would quickly grow to the point of being unwieldy if it captured just a fraction of similar references from UPPCO’s direct and rebuttal testimony. The Black & Veatch Report is clearly the centerpiece of UPPCO’s resource plan and is, therefore, of vital importance to this case. Unfortunately, the problematic disclaimers only came to light after the record had closed. Had ABATE identified the statements earlier, it certainly would have moved to strike the exhibit in its entirety. At a minimum, ABATE would

have questioned UPPCO's witnesses about the disclaimers during cross-examination. Seeing that no party objected to its admissibility, however, ALJ Snider allowed the Black & Veatch Report to become part of the official record. As a result, ABATE's arguments go to the weight of the evidence at issue.

**2. The Black & Veatch Report is deficient from an evidentiary standpoint.**

The Black & Veatch Report is deficient from an evidentiary standpoint. The admissibility of scientific (and other technical) evidence is governed by the Michigan Rules of Evidence ("MRE"), specifically Rule 702, and a trilogy of cases that began with the landmark decision in *Daubert v Merrell Dow Pharms*, 509 US 579 (1993).<sup>6</sup> In *Daubert*, the U.S. Supreme Court ruled that testimony based on scientific evidence needed to be both relevant and reliable to be admissible. *Relevance* is determined by whether the evidence will assist the trier of fact to understand the evidence to determine a fact in issue. *Reliability* requires a showing that the evidence is based on the methods and procedures of science. *Daubert*, 509 US at 590.

Rule 702 provides that a qualified expert witness may offer opinions at trial if the court first determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. Rule 702 goes on to say that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of opinions, but only if the following three conditions are met: (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

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<sup>6</sup> The other two cases are *Woodard v Custer*, 476 Mich 545, 719 NW2d 842 (2006) and *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 685 NW2d 391 (2004).

Similarly, in *Gilbert v Daimler Chrysler Corporation*, the Michigan Supreme Court emphasized that it is the obligation of the trial court to ensure that any expert testimony admitted at trial is “reliable.” *Gilbert*, 470 Mich 780. The *Gilbert* Court called the trial court's assigned responsibility a “gatekeeping role” and indicated that the admissibility of an expert's opinions would be within a court's “discretion.” *Id.* This gatekeeper role applies to all stages of expert analysis, as Rule 702 mandates *searching inquiry*, not just of data underlying expert testimony, but also of the manner in which the expert interprets and extrapolates from those data. When the court focuses its Rule 702 inquiry on the data underlying an expert opinion and neglects to evaluate the extent to which the expert extrapolates from those data in a manner consistent with *Daubert*, it runs the risk of overlooking an “analytical gap” between the data and the opinion expressed by the expert. The fear being that ostensibly legitimate data may serve as a Trojan horse that facilitates the surreptitious advance of junk science and spurious, unreliable opinions. *Id.*, at 749.

Rules 901 and 902 are also relevant to the court’s analysis, but they do not govern substantive admissibility. They are merely concerned with the requirements for authentication and identification of evidence that is otherwise admissible under the MRE. The Michigan Court of Appeals explained addressed this issue in *Mitchell v Kalamazoo Anesthesiology*, 321 Mich App 144, 908 NW2d 319 (2017). As illustrated by the summary below, there are clear parallels between the evidentiary issues raised in *Mitchell* and those created by the Black & Veatch Report:

One key issue at trial was whether an ultrasound image sought to be introduced by the defense was, in fact, an accurate scan of the ultrasound image taken of plaintiff's shoulder on the day of surgery. The image purported to show that Dr. Smith properly placed the needle and catheter while performing the post-operative services on plaintiff. Outside the presence of the jury, the trial judge held that defendants had properly

authenticated the image and, as a result, plaintiff's counsel was precluded from presenting evidence or argument to the jury that the proffered image was not, in fact, an accurate image of plaintiff's shoulder.

As explained below, we conclude that the trial court properly served its gatekeeping role by admitting the ultrasound image as authentic under Michigan Rule of Evidence 901. Yet, authentication under MRE 901 is a threshold matter that goes to the admissibility of evidence, not to the ultimate weight to be given that evidence. By precluding plaintiff's counsel from attacking the genuineness and reliability of the ultrasound image before the jury, the trial judge overstepped his gatekeeping role and, instead, intruded on the jury's role as fact-finder. Given the importance of the ultrasound image to this dispute, we reverse and vacate the judgment and remand for further proceedings.

In the end, the *Mitchell* court held that the trial court did not abuse its discretion in authenticating defendant's ultrasound evidence, but it did err in precluding plaintiff from later arguing to the jury that the ultrasound was not genuine or reliable and therefore lacked probative value. Because the ultrasound was a critical piece of evidence in the case, the court of appeals vacated and remanded.

ABATE brings this case to the Commission's attention in anticipation of a potential objection due to the timing of ABATE's criticism of the Black & Veatch Report. Just like the ultrasound in *Mitchell*, though, the Black & Veatch Report is a critical piece of evidence in this case that was sponsored by an expert witness. Therefore, Rule 702 tasks the Commission with performing a continuous "searching inquiry," not just of the data underlying expert testimony, but also of the manner in which the expert interprets and extrapolates from those data. *Gilbert*, 470 Mich 749. Thus, it is insufficient for UPPCO to show that the opinion rests on data viewed as legitimate in the context of a particular area of expertise. As the proponent of the evidence, UPPCO must also show that "any opinion based on those data expresses conclusions reached through reliable principles and methodology." *See Id.* UPPCO has not done that in this case, and there does not appear to be a viable way for UPPCO to rehabilitate the evidence in which it relies

so heavily upon. ABATE acknowledges that evidence “need not tell the whole story of a case, nor need it be free of weakness or doubt. It need only meet the minimum requirements for admissibility.” *People v McDade*, 301 Mich App 343, 353, 836 NW2d 266 (2013). Beyond that, it is up to the finder of fact to sift through the evidence and weigh it properly. *People v Berkey*, 437 Mich 40, 52, 467 NW2d 6 (1991). Given that the Black & Veatch Report is already in evidence, ABATE urges the Commission to afford the evidence little, if any, weight. The Black & Veatch Report is not reliable and, therefore, has little-to-no probative value in this proceeding.

**C. UPPCO failed to submit a comparative cost analysis to support its request to replace Portage with a new RICE unit.**

The existing Portage unit is a 45-year-old, oil-fired combustion turbine that provides approximately 24 MW of nameplate generation capacity. Exhibit A-1, p 29. This represents approximately 45% of UPPCO’s company-owned capacity and 14% of UPPCO’s total capacity. Before Black & Veatch was able to complete its modeling efforts, Portage experienced a “catastrophic mechanical failure” in late-2018. Consequently, UPPCO filed a claim with its insurance carrier. UPPCO anticipated that it would receive insurance proceeds commensurate with the cost of repairing the damaged unit, but UPPCO has been clear about its intent to allocate the insurance proceeds elsewhere. Specifically, UPPCO hoped the Commission would approve its request to forego making the necessary repairs at Portage in favor of using the insurance proceeds to offset the cost of a new RICE unit. UPPCO witness Haehnel testified that, if the Commission rejects the proposed RICE unit, “UPPCO intends to utilize an equivalent value of the insurance proceeds net of associated clean-up costs and associated labor, or approximately \$ [REDACTED], toward repairing and/or refurbishing the 45-year old, oil-fired Portage CT.” 2 Tr 85.

As part of its cost update in this case, UPPCO informed the parties that it had reached a settlement with its insurance provider:

The value of the insurance settlement is \$ [REDACTED] if UPPCO builds a replacement unit. Key terms of the settlement include: (i) a \$500,000 deductible, (ii) will be dispersed to UPPCO from the insurance company upon consummation of the insurance settlement agreement, and (iii) the remaining will be dispersed to UPPCO within two years of the date of the loss of the Portage unit, contingent upon the UPPCO providing proof of associated expenditures related to UPPCO's replacement unit. [UPPCO's Initial Br, p 30; *See Confidential Exhibit A-27, p 2.*]

The "replacement unit" referenced above is, of course, the proposed RICE unit.<sup>7</sup> UPPCO Initial Br, p 30. As noted in its Initial Brief, UPPCO provided testimony rebutting criticisms from both the Citizens Against Rate Excess ("CARE") and ABATE regarding the necessity and cost of a new RICE unit. *Id.* at 46. For example, UPPCO witness Haehnel presented "additional sensitivity analyses in Exhibits A-33 and A-34, which considered the economic value of the RICE unit for UPPCO's customers under a variety of energy and capacity price scenarios." *Id.* UPPCO also responded to the potential alternative of a simple cycle CT proposed by ABATE witness Alderson. In doing so, UPPCO points to the "increased efficiency" and "reliability benefits" that a new RICE unit would provide. *Id.* at 47. These purported advantages, however, can all be traced back to the Black & Veatch Report. Moreover, UPPCO's Initial Brief is silent when it comes to the parallels that ABATE drew between Portage and its "sister-unit" located at the Gladstone facility. 2 Tr 161. UPPCO witness Tripp characterized the Portage and Gladstone units in familial terms as they are both 40+ years old and have comparable nameplate capacities. *Id.* These combustion turbines produce "approximately 0.1 percent of UPPCO's energy needs, which is approximately 837 MWh annually. The direct cost of the turbines is \$ [REDACTED]/MWh.

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<sup>7</sup> UPPCO plans to reflect the insurance settlement monies, net of associated clean-up costs, including UPPCO labor, in a manner that offsets the cost of the proposed RICE unit as shown in Confidential Exhibit A-26.

Exhibit A-1, p 29. Of note in this case is the fact that both units have recently experienced mechanical failures that threatened to expedite their respective retirements. In fact, Gladstone is only online today due to the repairs that it received less than one year before its scheduled retirement date.

Originally, UPPCO planned to retire the Gladstone unit in 2019, but this was before it discovered a condition that required Gladstone to immediately come offline. UPPCO Initial Br, p 12. Even after realizing that the problem carried the potential of a “catastrophic failure” in the future, and despite its impending retirement date, UPPCO determined that the benefits of repairing Gladstone justified the corresponding costs. *Id.* at 13. The Gladstone unit subsequently returned to service in December 2018, and it is now slated to be retired in 2022. *Id.* The takeaway here is that UPPCO’s “analysis and review of both the condition and the repair costs associated with the Gladstone” extended the life of an aging generation unit by several years. The same may be true for the Portage unit, which is not slated to retire until 2024, but UPPCO remains opposed to even exploring this possibility. The Commission should take this opportunity to remind UPPCO that it is neither reasonable nor prudent to haphazardly ignore viable resources options. Doing so only serves to cast further doubt on the validity of UPPCO’s proposals and runs contrary to the whole purpose of an IRP. Therefore, the Commission should require UPPCO to thoroughly examine both options and before it authorizes the construction of an expensive new RICE unit.

Absent a reliable cost-benefit analysis, the Commission is unable to conclude, with any confidence at least, that constructing a new RICE unit is the more reasonable and prudent option when compared to repairing an existing resource. Furthermore, even if UPPCO had included a reliable cost-benefit analysis as part of its filing, the Commission would still be left with a

relatively straightforward choice given the disparity between the cost of repairing the Portage unit and the cost of constructing a new RICE unit. For perspective, the Portage repairs amount to \$ [REDACTED], but that money would come from UPPCO's insurance carrier, *not* ratepayers. UPPCO's proposed RICE unit, on the other hand, saddles ratepayers with \$ [REDACTED] in arguably unnecessary costs over a 30-year period. Confidential Revised Exhibit A-10, p 5.

Regardless of how UPPCO spins it, the utility failed to meet its evidentiary burden here. In administrative proceedings, the party seeking relief (*e.g.*, UPPCO) must prove its claim by a preponderance of the evidence. *Dillon v Lapeer State Home & Training School*, 364 Mich 1, 8; 110 NW2d 588 (1961); *see also BCBSM v Governor*, 422 Mich 1, 88-89; 367 NW2d 1 (1985); MPSC Case No. U-7484, 8/30/83 Order, p 10; MPSC Case No. U-8030-R, 7/9/87 Order, pp 16-17. Preponderance of the evidence means "such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." *People v Pugh*, 48 Mich App 242, 245; 210 NW2d 376, 378 (1973). The Michigan Supreme Court has held that an administrative body, such as the Commission, cannot base its decision upon conjecture or speculation. *Dillon v Lapeer State Home & Training School*, 364 Mich at 11. The Court also ruled that no essential issue may be left to surmise, guess, or conjecture. *Id.* The Commission should recognize that it is unable to authorize the construction of the RICE unit without violating the Court's direction. To do so would require the Commission to base its decision on the Black & Veatch Report, which is unreliable on its face, or a non-existent analysis that examines the comparative costs of repairing Portage and constructing a RICE unit.

**D. Staff recommends approval of UPPCO's solar PPA proposal and then argues that UPPCO failed to perform an adequate risk analysis.**

To support its proposal to execute a long-term solar PPA, UPPCO relied on Black & Veatch's modified version of the National Renewable Energy Laboratory's ("NREL") Annual

Technology Base (“ATB”) for resource characteristics and costs for its modeling. Staff finds UPPCO’s use of the 2017 NREL ATB to be reasonable, but questions the addition of a 20% uplift or “owner’s charge.” Staff Initial Br, p 12. As explained in Circle Power’s Initial Brief, UPPCO purportedly added this uplift to allow it to better assess its full costs:

The NREL 2017 costs represent direct “overnight” costs only, so that capital costs utilized in the UPPCO model represent the NREL costs + a 20% uplift for owner’s costs, consistent with Black & Veatch’s observations for similar projects. For example, the tab “Land-Based Wind” shows \$1,678 for 100 MW of onshore wind at a weighted average wind speed of 6.2 m/s as expected for the Upper Peninsula. [Circle Power Initial Br, p 9, citing 2 Tr 502.]

ABATE shares this concern, as the evidentiary record makes it readily apparent that the additional owner’s cost unreasonably inflates the modeling inputs. Staff reached the same conclusion after comparing the NREL’s definitions with a modification that Black & Veatch built into its analysis. As noted in Staff’s Initial Brief, the 20% addition is a duplication of what NREL already includes in its cost estimates. Staff Initial Br, p 12-13. From Staff’s perspective, the NREL ATB cost estimates are “improper” because they lead to “artificially high” modeling costs for renewable energy resources. *Id.* at 13. Despite taking such a firm position on the issue of inflated modeling inputs, Staff ultimately backs off and claims that the inappropriate inputs “did not materially affect the outcome of the modeling.” *Id.* Staff fails to explain what it means by “materially affect,” nor does it provide any evidence that would support such a conclusion. Instead, Staff doubles down on its seemingly contradictory position by claiming that Black & Veatch’s models would have selected the 125 MW solar PPA “regardless of what the NREL modeling inputs were.” *Id.* Apparently, Staff is of the opinion that the solar PPA is so attractive that the Commission should ignore the fact that UPPCO is basing its proposal on a modeling process that incorporated obviously distorted inputs.

ABATE would caution against approving the solar PPA proposal without a complete understanding of the magnitude of these distortions. Like Staff, UPPCO may argue that because the 20% uplift was likewise applied to solar energy, such double-counting represents at most harmless error. As noted by Circle Power, however, “the NREL 2017 ATB and NREL 2018 ATB reports each also contain projections for future decreases in on-shore wind CAPEX costs at the technology resource groups appropriate for the Upper Peninsula—all of which have been ignored in the IRP analysis.” Circle Power Initial Br, p 10. UPPCO’s modeling instead “inexplicably shows an increasing CAPEX cost curve for on-shore wind in its capital cost assumptions.” *Id.* This is just one more reason why the Commission should reject any calls for UPPCO to recover the costs associated with the first three years of the solar PPA.

ABATE maintains that there is a high probability of the PPA being a net cost increase to UPPCO’s customers. ABATE relies on a sensitivity analysis performed by ABATE witness Alderson to support this position. Staff considered the capacity price forecast in ABATE’s analysis to be unreasonable, as it used the PRA capacity price as a starting point. Staff Initial Br, p 19. According to Staff, if Ms. Alderson had not accepted an unreasonably low capacity price forecast, her calculations would show that “there are more cases in which the solar PPA is a benefit to customers and the cases in which the PPA is a cost to customers are clustered near the breakeven point.” *Id.* Such an outcome may comport with Staff’s analysis, but Staff can only claim that there are “more situations that provide customer benefits than points that show rate payer liability,” if it ignores certain realities. *Id.* For example, the economic analyses performed by ABATE and Staff regarding the solar PPA were *both* predicated on a contract price that is now inaccurate. 2 Tr 454-455. This is because as the actual contract rate has increased from \$█████/MWh to \$█████/MWh with an annual escalation factor of █████%, which brings the PPA

rate above \$ [REDACTED]/MWh by year [REDACTED], and escalates up to \$ [REDACTED]/MWh in year [REDACTED]. Confidential Revised Exhibit A-7. Furthermore, Staff continues to disregard the possibility that future commodity price reductions may be more drastic than Staff predicts. 2 Tr 454-455.

Separately, ABATE has been critical of the fact that UPPCO failed to evaluate the risk of the 125 MW Solar PPA if natural gas prices were to fall. Staff disputes this assertion and points out that “UPPCO ran a Monte Carlo risk analysis and showed that the solar PPA is the least sensitive to changes in natural gas price of any build plan the Company analyzed.” Staff Initial Br, p 19. Staff undermines its own argument later in its Initial Brief by arguing that “neither the sensitivity analysis nor the Monte Carlo stochastic analysis were initially used on the Company’s PCA and many of the MIRPP scenarios were not evaluated in either analysis.” *Id.* at 44. Ironically, Staff raises this argument in the context of recommending that “UPPCO should conduct a more robust risk assessment for its next IRP.” *Id.* at 43. This is exactly the point that ABATE is seeking to make. UPPCO did not sufficiently examine the very real possibility that natural gas prices will return to their historically low levels, or perhaps even beyond. Circle Power sums up this concern nicely:

Modeling with incorrect assumptions has led to UPPCO’s relying on incorrect conclusions for the basis of this IRP and the included PCA. Moreover, the errors and shortcomings...suggest further undiscovered issues with UPPCO’s IRP, evidencing the general weakness of the IRP as a whole; the flawed models forming the basis of this IRP cannot provide an adequate factual foundation to support the ‘most reasonable and prudent’ showing that UPPCO is required to make under MCL 460.6t(8)(a) in order to receive Commission approval for its IRP. [Circle Power Initial Br, p 8.]

Just to be clear, the Black & Veatch Report served as UPPCO’s sole justification for issuing an RFP that only solicited bids from solar developers rather than opening the bidding up to other technologies or Qualified Facilities (“QFs”). 2 Tr 507; Exhibit CP-6. Moreover, the solar-only RFP sought prices for just 20 MW – far less than the 125 MW that UPPCO proposes

in this case. ABATE explained the obvious and irrefutable flaws associated with making such a material adjustment to the PPA terms through bilateral negotiations instead of issuing a new RFP to potentially capture increased savings in its Initial Brief. ABATE will not revisit that particular argument here, but it will remind the Commission that not one of the proposals received by UPPCO in its solar RFP process for 20 MW offered an energy cost below UPPCO's Locational Marginal Pricing ("LMP") Energy Rate Forecast—the avoided cost rate set in U-18094—and yet, at that exact moment in time, UPPCO had proposals from on-shore wind QFs to inform its avoided cost pricing in Case No. U-18094. 2 Tr 507; Circle Power Initial Br, pp 14-15. Witnesses testifying on behalf of ABATE and Circle Power both indicated that these QF wind projects were significantly more competitive than the solar and wind options calculated as part of Black & Veatch's modeling. Indeed, at the 20 MW RFP scale, "the pricing from existing wind QFs attempting to enter into active discussions with UPPCO would have been the least-cost proposals received." Circle Power Initial Br, p 15.

**E. ABATE maintains its position that UPPCO failed to demonstrate a present need for an FCM.**

UPPCO requests an FCM as part of its IRP to "counteract the negative credit impacts" associated with the proposed solar PPA. UPPCO Initial Br, p 62. This is an interesting argument for UPPCO to make, given that UPPCO has made a considerable effort to convince the Commission that the solar PPA is a good deal for customers. While ABATE disagrees that the solar PPA will necessarily impact UPPCO's creditworthiness, if there are any negative credit impacts, they will not be as profound as UPPCO would have the Commission believe. For example, UPPCO claims that its position in this case is "in alignment with Moody's, its credit rating agency." *Id.* at 64. First, it is unclear what UPPCO means by referring to Moody's as "its" credit rating agency. There are a number of rating agencies that track utilities and they are all

free to assess UPPCO's creditworthiness in their own way. Second, even if Moody's was the sole arbiter of how, or if, the solar PPA should translate into an imputed debt determination, UPPCO has not shown that Moody's would necessarily impute any debt at all. UPPCO did include an excerpt from *Moody's Rating Methodology: Regulated Electric and Gas Utilities*, dated June 23, 2017, in its Initial Brief that may appear to support UPPCO's position, but the excerpt lacks context and only tells half the story. ABATE entered this particular Moody's report into the record as Exhibit AB-7, and urges the Commission to review UPPCO's four-sentence excerpt in the context of Moody's broader discussion of PPAs, which can be found on pages 46-48 of the Moody's report.

In the meantime, the Commission may find the following comparison informative. Both excerpts appear on the same page of the Moody's report, but they stand for very different propositions:

**UPPCO Initial Br, p 64.**

*When the accounting treatment of a PPA is a debt or lease equivalent (such that it is reported on the balance sheet, or disclosed as an operating lease and thus included in our adjusted debt calculation), we generally do not make adjustments to remove the PPA from the balance sheet. However, in relevant circumstances we consider making adjustment that impute a debt equivalent to PPAs that are off-balance sheet for accounting purposes. Regardless of whether we consider that a PPA warrants or does not warrant treatment as a debt obligation, we assess the totality of the impact of the PPA on the issuer's probability of default. Costs of a PPA that cannot be recovered in retail rates creates material risk, especially if they also cannot be recovered through market sales of power.*

**ABATE Initial Br, p 16.**

*The most conservative treatment would be to treat a PPA as a debt obligation of the utility as by paying the capacity charge, the utility is effectively providing the funds to service the debt associated with the power station.*

The language highlighted by UPPCO and ABATE may appear contradictory, but this is not all that surprising, given that Moody's takes varying approaches when examining PPAs for

the purposes of imputing debt. In its Initial Brief, UPPCO acknowledges that several parties have “questioned whether UPPCO needs an FCM for the Solar PPA.” UPPCO Initial Br, p 63. This is true, but it downplays the level of opposition there has been to UPPCO’s proposed FCM. In addition to questioning the merits UPPCO’s proposal, certain parties, ABATE being one of them, flatly stated that UPPCO failed to demonstrate a present need for an FCM. ABATE Initial Br, p 15. Furthermore, these parties did not “fail to consider the magnitude of the financial commitment and the proportion of UPPCO’s total power supply portfolio represented by the Solar PPA,” as UPPCO claims. UPPCO Initial Br, p 64. ABATE certainly considered this as part of its review process, but the primary source of opposition is derived from the fact that UPPCO failed to show why it should be incentivized to procure energy and capacity through PPAs when it already does this today. In the end, UPPCO failed to present persuasive evidence that would suggest that, despite its heavy reliance on PPAs in the past, UPPCO suddenly “needs” an FCM. *Id.* at 63; 2 Tr 56.

**F. The Commission should refrain from granting UPPCO any waivers related to the IRP filing requirements.**

In its Initial Brief, Staff suggests that “UPPCO should request waivers in the future for inapplicable filing requirements, work with Staff on its future RFPs, and modify its request for a financial compensation mechanism (‘FCM’) in its next general rate case.” Staff Initial Br, p 3. Act 341 allows the Commission to implement separate “filing requirements, review criteria, and approval standards” for an electric utility with fewer than 1,000,000 customers. MCL 460.6t(4). As UPPCO is a small utility with 52,000 customers, it could have sought waivers from certain filing requirements. UPPCO Initial Br, p 4; 2 Tr 243. Nonetheless, UPPCO opted against pursuing any waivers, and has instead endeavored to comply with all of the Commission’s filing requirements. *Id.* This is commendable, but the Commission should not allow UPPCO’s small

size to serve as a scapegoat at this late stage in the case. Doing so would be prejudicial to the other parties that have invested significant time and resources reviewing and critiquing UPPCO's filing. Therefore, the Commission should reject Staff's recommendation to grant UPPCO an *ex post facto* waiver from certain IRP filing requirements.

Staff reviewed each component of UPPCO's filing in this case in light of the IRP filing requirements that the Commission adopted in Case Nos. U-18418 and U-18461. Following this review, Staff summarized its findings regarding UPPCO's compliance with each individual filing requirement. *See* Exhibit S-2.0; 2 Tr 241. Despite uncovering a litany of deficiencies with UPPCO's filing<sup>8</sup>, Staff somehow concluded that "the incomplete requirements do not greatly impact the final result of the IRP; and, therefore, should not form a reason to reject the IRP." Staff Initial Br, p 8. Staff is wrong. It would be perfectly reasonable for the Commission to reject UPPCO's IRP in its entirety. Although UPPCO has rectified some of the shortcomings that plagued its initial filing, it only did so at the prodding of Staff and other intervenors. Even a cursory review of Staff's 13-page exhibit outlining UPPCO's failings and inadequacies should give the Commission significant pause. At the very minimum, the Commission needs to recommend considerable changes to UPPCO's proposed resource plan to bring it into compliance with Act 341 and the Commission's own regulations. Giving UPPCO a pass would in this case send a discouraging message to all of the stakeholders that worked on developing robust IRP filing and modeling processes. It would also embolden other utilities to stray from the Commission's requirements in subsequent IRP proceedings. Staff alluded to how the defects in UPPCO's filing disadvantaged the other case participants:

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<sup>8</sup> In addition to Staff, Circle Power highlights several of UPPCO's more egregious oversights in its Initial Brief. *See* Circle Power Initial Br, pp 27-32.

By filing an incomplete application without waiver requests, Staff found the review of the Company's IRP **burdensome and unduly time consuming**. The incomprehensible responses and missing filing requirements **significantly impeded Staff's review** of this case. [2 Tr 244 (emphasis added).]

Circle Power Company also included an astute observation along these same lines in its

Initial Brief:

Stringent regulatory time limits are placed on Staff and Intervenors' review period in an IRP proceeding on the assumption that they will be provided with a full set of documentation up front with which to work. **When a utility submits poor and incomplete documentation**, as occurred here, **parties are forced to spend more of their precious little time deciphering filings and less doing real review**, necessarily leading to a less thorough audit of the plan filing than would otherwise be possible. This in turn makes it difficult for all parties involved—including the Commission—to determine whether the utility's plan is in fact the 'most reasonable and prudent.' **Because of UPPCO's failures to comply adequately with the governing statute and relevant Commission requirements for its IRP filing**, and in order not to set a precedent whereby utilities filing an IRP may be permitted to submit substandard work product and bury Staff and intervenors in confusion and follow-up questions, **the Commission should maintain the integrity of the IRP process and deny approval of UPPCO's IRP filing**. [Circle Power Initial Br, pp 29-30 (emphasis added)(internal citations omitted).]

In addition to the forgoing considerations, the Commission's decision in this case should be informed by a review of the waiver provisions in Act 341 and the Commission's own findings related to the same. Staff correctly notes that the waiver provision in Act 341 applies to UPPCO, but then it goes on to claim that "UPPCO is **entitled** to appropriate waivers **upon request**." *Id.* at 4 (emphasis added). By making this statement without qualification, Staff misconstrues the statutory language governing waivers and the Commission-imposed requirements. First, UPPCO is not *entitled* to a waiver of any sort in this case by default. Section 6t(4) of Act 341 provides that the Commission "**may** issue an order implementing separate filing requirements, review criteria, and approval standards" that differ from those established under Section 6t(3). MCL

460.6t(4)(emphasis added). Act 341 also makes certain concessions for a utility that provides electric service to customers in Michigan and at least one other state:

An electric utility providing electric tariff service to customers both in this state and in at least 1 other state may design its integrated resource plan to cover all its customers on that multistate basis. If an electric utility has filed a multistate integrated resource plan that includes its service area in this state with the relevant utility regulatory commission in another state in which it provides tariff service to retail customers, the commission shall accept that integrated resource plan filing for filing purposes in this state. [*Id.*]

The Commission retains the authority, however, to require supplemental information if necessary as part of its evaluation and determination of whether to approve the plan. *Id.* The Commission may also adjust the filing dates for a multistate IRP filing in Michigan to place its review on the same timeline as other relevant state reviews. UPPCO has not claimed a waiver under the applicable multi-state provisions in Section 6t(4). The Commission did exercise its statutory authority pursuant to Section 6t(4) when it issued an order in late-2017 that established relaxed filing requirements for smaller utilities. *See* MPSC Case No. U-18461, 12/20/17 Order. This order followed months of stakeholder engagement meetings and a review of multiple rounds of comments regarding the IRP implementation process. The Commission addressed the issue of waivers directly when it noted the following:

[T]he flexibility provided by the IRP filing requirements appropriately allows each utility to specifically tailor its initial IRP, and it avoids ‘unnecessary and duplicative administrative, legal and processing costs which must be borne by relatively few customers, compared to the major electric utilities.’ [*Id.* at 10, citing MEGA’s Initial Comments, p 2.]

In its Reply Comments in the same case, UPPCO agreed with MEGA and expressed support for the language in the *Waivers and Process for Smaller and Multistate Utilities* section of the draft IRP filing requirements. MPSC Case No. U-18461, 12/20/17 Order, p 10. After a review of UPPCO’s Reply Comments, it occurred to the Commission that there was no deadline

to file a waiver application. *Id.* The Commission noted that, if a utility were to request a waiver in conjunction with the filing of its application, the Commission would find itself in the problematic position of either granting a waiver or rejecting the IRP. *Id.* Therefore, the Commission amended the first paragraph of the *Waivers* section as follows:

**An Electric utilities with fewer than 1,000,000 customers in this state may request a waiver to any portion of these IRP filing requirements with its IRP application. Any request for a waiver shall include a discussion and justification outlining why the waiver is warranted and in the best interest of its customers. Discussion and justification for the requested waiver shall include a description of the utility's current and forecasted energy and capacity needs, and its plan for meeting those needs over the upcoming ten years.**

**If the utility requires resolution of a waiver request prior to filing an IRP application, the utility shall file the waiver request no less than 60 days prior to the filing of the IRP application. [*Id.*]**

The Commission's order clearly indicates that waiver requests must be filed at least 60 days *before* a utility files its IRP. Therefore, UPPCO is estopped from seeking a waiver at this stage of the proceeding.

### III. CONCLUSION

UPPCO argues that it endeavored to develop an IRP that would allow for the provision of electric service in "the most efficient, reliable, cost-effective and sustainable manner possible." UPPCO Initial Br, p 7. Unfortunately, UPPCO did not include sufficient analyses of its proposals or reliable empirical data in its filing that would allow the Commission to decide whether UPPCO succeeded in developing the most reasonable and prudent plan to meet its future energy and capacity needs. This is due (at least in part) to UPPCO's outsourcing of a considerable amount of modeling and technical work to Black & Veatch. In light of the self-defeating statements in the Black & Veatch Report, it is all but empty from an evidentiary standpoint. The Commission cannot in good conscience afford any weight to documentary evidence that

explicitly disavows the validity of its own conclusions. Since the authors of the Black & Veatch Report, and by extension UPPCO, are unwilling to vouch for the credibility of the data and assumptions purportedly used in the development of those conclusions, the Commission must find UPPCO's primary piece of evidence unreliable. As such, ABATE requests that the Commission issue an adopting ABATE's positions as outlined in its testimony and legal briefs.

Respectfully submitted,

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Date: August 29, 2019

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\*\*\*\*\*

In the matter of the application of UPPER )  
PENINSULA POWER COMPANY for )  
approval of its integrated resource plan pursuant )  
to MCL 460.6t and for other relief. )  
\_\_\_\_\_ )

Case No. U-20350

Hon. Martin D. Snider

PROOF OF SERVICE

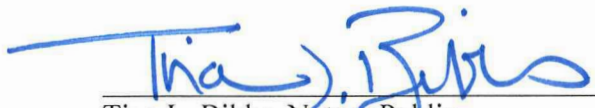
STATE OF MICHIGAN )  
 ) ss  
COUNTY OF INGHAM )

Bryan A. Brandenburg, being first duly sworn, deposes and says that on August 29, 2019, I did cause to be served the *Association of Businesses Advocating Tariff Equity's Reply Brief (public version)*, along with this *Proof of Service*, in the above docket, via electronic mail, to the persons identified on the attached service list.



\_\_\_\_\_  
Bryan A. Brandenburg

Subscribed and sworn to before me  
this 29th day of August, 2019.



\_\_\_\_\_  
Tina L. Bibbs, Notary Public  
Clinton County, Michigan  
Acting in the County of Ingham  
My Commission Expires: November 13, 2021

**SERVICE LIST**  
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