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October 17, 2016

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

**Re: MPSC Case No. U-17990**

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find the Initial Brief on behalf Energy Michigan, Inc., as well as Proof of Service. Please contact our office if you have any questions.

Thank you for your assistance in this matter.

Sincerely yours,

VARNUM

Timothy J. Lundgren

TJL/kc

c. ALJ  
Parties

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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-17990**

**INITIAL BRIEF**

**OF**

**ENERGY MICHIGAN, INC.**

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**Contents**

I. INTRODUCTION .....3

II. ARGUMENT .....3

    A. Consumers’ Incentive Compensation Proposal Needs to Be Modified to Properly Reflect True Costs and Benefits for its Customers. ....3

    B. Consumers’ Justification for Its Demand Response Program Is Not Supported by Claims of a Capacity Shortage, nor Can Such a Program be Operated as “Michigan First” .....5

    C. Consumers’ Economic Development Program Amounts to a New Economic Development Tax on Consumers' Ratepayers .....6

    D. The Commission Should Reject Consumers’ Revenue Adjustment Mechanism as Proposed.....8

    E. Plug-In Electric Vehicle Program.....9

III. CONCLUSION.....10

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**INITIAL BRIEF OF ENERGY MICHIGAN, INC.**

**I. INTRODUCTION**

This Initial Brief is filed on behalf of Energy Michigan, Inc. (“Energy Michigan”) by its attorneys, Varnum LLP. Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

**II. ARGUMENT**

**A. Consumers’ Incentive Compensation Proposal Needs to Be Modified to Properly Reflect True Costs and Benefits for its Customers.**

Energy Michigan recommends that if the Commission approves an incentive compensation mechanism, then it should require several modifications to the program proposed by Consumers. These suggested revisions will better align the proposed program with true cost of service, in accordance with MCL 460.11(1).

As Energy Michigan’s witness, Mr. Alexander J. Zakem, pointed out in his Direct Testimony, there are two main deficiencies in Consumers’ program. The first is that it fails to tie the performance being rewarded under the program to benefits to customers. See 8 Tr. 2724. Consumers’ Exhibit A-30 shows that 50% of the incentive payout is tied to financial goals that benefit shareholders and not customers. It is only equitable that if there is to be a shared benefit

based on these goals, that share should come from the increased shareholder earnings and not from customer rates. It is not reasonable to ask Consumers' customers to pay increased rates to reward the Company for increasing revenue for its shareholders, when that revenue increase has come from the customers themselves. One particular example that Mr. Zakem points to is that "performance" is defined as increased earnings per share, which benefits stockholders, not customers, and violates the principle of paying for services received on a cost-of-service basis. See 8 Tr. 2724. To resolve this concern, Mr. Zakem recommends that the "financial" portion shown on Consumers' Exhibit A-30 be excluded from the distribution rates of ROA customers.

The second main deficiency in Consumers' proposed incentive compensation proposal relates to a failure to separate distribution service benefits from power supply service benefits. One of the three "reliability" measures that Consumers provides on Exhibit A-30 ("Generation Reliability") relates directly to power plants. As Mr. Zakem discusses, Retail Open Access ("ROA") customers of Consumers, who take only distribution service and not power supply, do not receive, nor should they pay for, the benefits that are associated with improvements in power supply reliability. See 8 Tr. 2725. ROA customers are already paying another supplier and the Midcontinent Independent System Operator ("MISO") for these services. Therefore, the Commission should require that, in accordance with the cost-of-service principle of assigning costs to the customers that receive the benefits, ROA customers should be charged only for those incentive program costs that benefit distribution-only customers, and not for those that benefit power supply customers. In order to accomplish this, the "Generation Reliability (EFOR)" portion of Exhibit A-30 should be excluded from the distribution rates of ROA customers.

In rebuttal testimony, Consumers' witness Ms. Amy M. Conrad offers examples of other states where some recovery of incentive compensation has been permitted. Conrad p. 17. Closer

to home, it is worth noting that in their current rate case, DTE's witness testified that DTE does, in fact, split out the power supply and distribution incentives to the appropriate customer groups when they functionalize their costs. See Case No. U-18014, 3 Tr 438-439, Testimony of DTE Witness T. W. Lacey. Consumers has not suggested that they are doing the same, but should be required to do so. The fact that DTE is already doing so should lay to rest any concerns over the speculative difficulties that Consumers or any other party imagines would arise should a utility attempt to do such a functional separation. Not only is it obviously doable, but DTE found it logical and consistent with cost of service principles apparently independently of Mr. Zakem pointing out the importance of it. Consumers should follow suit.

**B. Consumers' Justification for Its Demand Response Program Is Not Supported by Claims of a Capacity Shortage, nor Can Such a Program be Operated as "Michigan First"**

Consumers witness J. H. Morales claims that the proposed demand response program will manage "the capacity shortage" and bridge "the capacity gap." Morales, pp. 9 & 16. Mr. Zakem explained at length how MISO assesses capacity supply, and he showed MISO's complete assessment in his Exhibit EM-2. MISO shows an amount of capacity under development that is ten times the nominal shortfall in the MISO region for 2021. Exhibit EM-2, p. 2. MISO also shows capacity under development in Zone 7 Lower Michigan that is 10 times the nominal Zone 7 shortfall in 2021. Exhibit EM-2, pp. 3-4. He also showed that the capacity situation determined by MISO for Zone 7 Lower Michigan has improved significantly over 2014-2016. Exhibit EM-3.

In light of these facts, the weight the Commission might give to a "capacity shortage" or "capacity gap" in justification for Consumers' demand response program should be miniscule.

Further, Mr. Zakem testified that a demand response program that qualifies a Load Management Resource (“LMR”) – a type of capacity resource in the MISO system that can be dispatched by MISO – can be used for the reliability benefit of any region, zone, or state within MISO.<sup>1</sup> This is a fact of the MISO tariff, not an opinion. As a result, there is no such thing as “Michigan first,” as Consumers claims, in the use of this resource by MISO.

Consumers, in its rebuttal testimony, does not appear to have the latest version of the MISO tariff. Consumers speaks about “planning resource credits” [Morales Rebuttal, p. 9.], a term and capacity product that became obsolete on May 31, 2013, replaced by “zonal resource credits.”<sup>2</sup> Consumers claims LMRs cannot be “exported” from one zone to another [Morales Rebuttal, p. 9.], apparently unaware that in the current MISO resource adequacy construct, where MISO uses all resources to serve all loads [Zakem, 8 Tr. 2727.], the concept of “exporting” or “importing” capacity among zones within MISO is meaningless.

### **C. Consumers’ Economic Development Program Amounts to a New Economic Development Tax on Consumers’ Ratepayers**

As Mr. Zakem points out in his testimony, in seeking ratepayer support for its economic development program, Consumers is behaving more like a state agency than a regulated electric utility. 8 Tr 2742-2743. If Consumers’ shareholders believe that it would be advantageous for the company to invest in economic development in Michigan, then Consumers is already able to invest *shareholder* dollars in such activities without needing to seek Commission approval. However, in order to invest *ratepayer* money in such activities, as Consumers seeks to do here,

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<sup>1</sup> For reference, MISO Tariff E-1, section 69A.3.3 states: “All LMRs that are cleared in the PRA/TPRA or were submitted in a FRAP must be available for use in the event of an Emergency as declared by the Transmission Provider, pursuant to the Emergency operating procedures of the Transmission Provider, unless replaced with other ZRCs pursuant to Section 69A.3.1.h.” Available at: <https://www.misoenergy.org/Library/Tariff/Pages/Tariff.aspx>.

<sup>2</sup> Also see FERC docket no. ER11-4081, order of June 11, 2012.

Consumers should show some direct benefit to those customers, or else the program violates Michigan's cost-causation principles of rate design.

Instead of showing direct ratepayer benefits from the proposed economic development program, Consumers points to hypothetical and abstract benefits, such as increased load growth and sales through the expansion of business in the state, customer expectations, political expectations, improved competitiveness for the State, and the utility's reputation. 5 Tr 772-773. When one considers that in the context of physical assets we require a utility to satisfy the principle of "used and useful," the speculative benefits of this program seem very hypothetical indeed. The risk that these benefits will not be produced by Consumers' investment of funds should not be shouldered by the ratepayers, but by the shareholders, because the shareholders will be the primary beneficiaries of increased business and load growth for Consumers, not the ratepayers. Equally important, is the countervailing concern that ratepayer-funded programs such as this one will continue to drive up Michigan's rates, providing an increasing disincentive both to businesses within the state looking to expand, and to new business considering Michigan as a place for new investment.

The only category of benefits listed claimed by Consumers that is relevant to its regulated monopoly utility business is "load growth," which Consumers witness Mr. J. C. Mayes asserts will spread a utility's fixed costs across a larger customer base. 5 Tr 774. Even then, Mr. Zakem has testified that the incremental cost of more resources to serve the additional load is a factor that determines whether average costs will go up or down. 8 Tr 2741. Nevertheless, load growth affects both power supply service and distribution. Thus, the cost of economic development activity that Consumers asserts will affect load growth should be split between power supply and distribution. 8 Tr 2741.



Consequently, if the Commission should decide to allow Consumers to recover some or all of its economic development expenses, then those costs should be allocated on a cost-of-service basis in line with Michigan's cost causation principles. Mr. Zakem points out that not all customers are affected equally by increased load on the system. Sales growth will primarily affect power supply costs, which ROA customers do not pay. 8 Tr. 2741. For this reason, Mr. Zakem recommends that if economic development expenses are allowed, that they first be allocated to power supply and distribution separately, on the basis of relative total investment. 8 Tr 2743. Then, Mr. Zakem recommends that the power supply amount be allocated to power supply customers based on sales in each rate class, and that the distribution amount be allocated to distribution customers based on distribution sales in each rate class. *Id.* If the costs were to be allocated instead by number of customers, the residential class would end up paying about 90% of the economic development costs, but not receive a commensurate decrease in rates. 8 Tr 2744.

**D. The Commission Should Reject Consumers' Revenue Adjustment Mechanism as Proposed.**

As Mr. Zakem cited in his Direct Testimony, Consumers acknowledges that its proposed revenue adjustment mechanism ("RAM") was "conditional" and depended on the enactment of legislation allowing such mechanisms for electric utilities during the pendency of this case. 8 Tr 2744. Energy Michigan therefore presumes that the Company, in accordance with its testimony, will rescind its RAM proposal.

However, should legislation authorizing an RAM be passed before an Order is issued in this case, Energy Michigan is concerned that the RAM proposed here is subject to a number of faults, some of which Mr. Zakem outlines in his testimony. See, 8 Tr 2745-2746. However, it is by no means certain that these would be the only issues of concern to Energy Michigan since the

parties in this case would not have had an opportunity to examine Consumers' proposed RAM in the context of its statutory approval to see if it accords with legal requirements. For this reason, Consumers should be precluded from offering a RAM proposal until there is statutory approval for such a mechanism in place in advance. Energy Michigan would therefore ask that the Commission reject Consumers' proposed RAM in this case even if there is legislation passed allowing for the approval of such mechanisms before the issuance of a final Order in this case.

#### **E. Plug-In Electric Vehicle Program**

As Mr. Zakem noted, whether or not an electric vehicle (“EV”) program should be approved is a policy decision for the Commission. For this reason, Energy Michigan supports the suggestion that any significant roll-out of an EV program be undertaken only following an opportunity for broader stakeholder input. This is particularly the case with respect to questions about how costs for EV infrastructure should be covered or recovered. As Mr. Zakem notes, the primary benefits offered for ratepayers related to Consumers’ regulated monopoly utility business derive from an increase in electric demand. 8 Tr. 2737. These benefits would seem to be similar to those cited for the economic development efforts focused on increasing load, as discussed above. Like those programs, the allocation of costs should follow cost of service principles, and the customers benefitting most from the program should be the ones that pay the costs for it. Thus, at this stage, based on Consumers’ assertions, it would appear that power supply customers would see the most benefit from an EV charging program, and as Mr. Zakem notes, “ROA customers see no benefit in increased demands for CE, because they do not take power supply service.” 8 Tr 2739. While some of the equipment involved in the infrastructure roll-out may be reasonably categorized as distribution equipment, it nonetheless is being added for the stated purpose of increasing electricity sales, which serves the power supply side.

Therefore, as Mr. Zakem concludes, and as follows from cost-of-service principles, these costs should not be added to the distribution costs that ROA customers pay. 8 Tr 2739.

### **III. CONCLUSION**

WHEREFORE, Energy Michigan respectfully requests that the Commission:

- A. If it approves Consumers' incentive compensation mechanism, should include the modifications suggested by Mr. Zakem in order to better align it with true cost of service;
- B. Should discount Consumers' arguments regarding any "capacity shortage" based on the analysis Mr. Zakem provides of the latest MISO reports;
- C. Should reject Consumers' economic development proposal, but if the Commission accepts it, then the costs should be split between power supply and distribution;
- D. Should reject Consumers' revenue adjustment mechanism;
- E. If the Commission approves an EV program for Consumers, then the costs should not be added to the distribution costs that ROA customers pay; and
- F. Grant such other and further relief as the Commission may find appropriate.

Respectfully submitted,

Varnum LLP  
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October 17, 2016

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Case No. U-17990

**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 17th day of October, 2016, she served a copy of Energy Michigan, Inc.'s Initial Brief, as well as this Proof of Service on the Persons identified on the attached service list via electronic mail.

\_\_\_\_\_  
Kimberly Champagne

**SERVICE LIST**  
**MPSC Case No. U-17990**

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