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January 18, 2017

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

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

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find Energy Michigan, Inc.'s Reply to Exceptions, 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**

**REPLY TO EXCEPTIONS**

**OF**

**ENERGY MICHIGAN, INC.**

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**Case No. U-17990**

**REPLY TO EXCEPTIONS OF ENERGY MICHIGAN, INC.**

On January 9, 2016, Consumers Energy Company (“Consumers”) filed its Exceptions to the Proposal for Decision (“PFD”) issued by the Administrative Law Judge (“ALJ”) in this case. Pursuant to Rule 435 of the Commission’s Rules of Practice and Procedure before the Commission, R 792.10435, and in accordance with the schedule set by the Administrative Law Judge (“ALJ”) in this proceeding, Energy Michigan submits these Replies to Exceptions to the PFD issued in this case on December 16, 2016. Energy Michigan’s Reply to Consumers’ Exceptions focuses on two issues: 1) Consumers’ proposal that the Commission should approve its economic development costs; and 2) Consumers’ proposal that the Commission allow it to recover incentive compensation program costs.

Energy Michigan’s failure here to reply to other Exceptions of Consumers or those of any other party does not signify an agreement with those Exceptions, nor a waiver of the positions it has taken in its testimony and briefing with respect to the issues raised in this case.

**I. Economic Development Costs**

Consumers Exceptions provide no new arguments nor any new basis for reversing the well-reasoned conclusions of the PFD rejecting Consumers’ proposed recovery of spending on economic development. As the PFD noted, economic development is not a core utility

function and the utility's customers should not be made to bear the costs of Consumers promoting its business.

In its Exceptions, Consumers recites the same arguments provided in its testimony, which amount to saying that it is in its business interests to be prepared to assist the businesses and state agencies seeking to site new operations in the state. While this may be the case, it is not at all apparent that doing so provides any clear benefits to Consumers' ratepayers which would justify the additional cost to them. Consumers is free to spend shareholder money on any economic development activities it wishes. Consumers' "interest" in seeing economic growth in its service territory does not mean that promoting such growth is a core utility function that ratepayers should fund.

The company's plea that "[i]t would be poor regulatory policy for the Commission to send a signal that a utility should not be engaging in economic development efforts" is a red herring.<sup>1</sup> For one thing, a rejection of Consumers' request to make its ratepayers pay for its business promotion efforts is not a signal that the utility should not be engaging in those efforts – just that it should use its own money to do so. Secondly, the state's "regulatory policy" has been set by the Legislature and is that rates should be cost-based. Consumers has utterly failed to demonstrate how its ratepayers, who it argues should pay these costs, have caused it to incur them. Therefore, approval of Consumers' recovery of its economic development spending in its rates would be contrary to the State's explicit regulatory policy. Placing economic development funding under the Commission's regulatory authority would mark a significant change in State policy, a change which would need to emanate from the Governor or the Legislature, and not from a utility in a rate case.

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<sup>1</sup> Exceptions of Consumers Energy Company, p. 55.

Consumers also fails to address the concerns voiced by Energy Michigan, that even if it were true that there was a direct benefit to Consumers' ratepayers from the proposed economic development activities (which Consumers has not shown) and it were consistent with the State's policy, nevertheless such a benefit would not accrue to distribution-only customers such as those on electric choice, as the increased sales of electricity would at best only aid in spreading fixed generation costs more broadly.<sup>2</sup> As retail choice customers do not pay such costs, they would not see the benefits of these expenditures, and so should not be required to reimburse the utility for making them. For these reasons, as well as those set forth in its testimony and brief, Energy Michigan supports the conclusions of the PFD and objects to Consumers' Exception seeking approval of economic development expenses.

### **Incentive Compensation**

Energy Michigan supports the PFD's conclusions that rejected Consumers' proposal to recover the costs of its Employee Incentive Compensation Plan ("EIPC") and those based on financial performance. Nevertheless, if the Commission does allow certain of Consumers' incentive compensation costs, then Energy Michigan believes that Consumers should be required to separate distribution service benefits from power supply service benefits. For instance, one of the three "reliability" measures that Consumers provides on Exhibit A-30 ("Generation Reliability") relates directly to power plants. As Mr. Zakem discusses in his testimony, 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.<sup>3</sup> These services are already being paid for by ROA

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<sup>2</sup> See, 8 Tr 2741-2744.

<sup>3</sup> See, 8 Tr 2725.

customers in their payments to their suppliers and the Midcontinent Independent System Operator (“MISO”) for the services they receive. Requiring ROA customers to pay Consumers for these services, which they do not receive from Consumers, would violate the State’s cost-of-service principles. Therefore, the Commission should require that 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. As Mr. Zakem testified, one way to accomplish this would be for the Commission to exclude the “Generation Reliability (EFOR)” portion of Exhibit A-30 from the distribution rates of ROA customers.<sup>4</sup>

It is worth noting that in its current rate case, U-18014, 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.<sup>5</sup> Consumers has not suggested that they are doing the same, but the Commission should require that they do so in order to be consistent with the State’s cost-of-service rate structure. The fact that DTE is making this division in its cost structure 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 be required to follow suit if its incentive compensation costs are allowed.

WHEREFORE, Energy Michigan hereby respectfully requests that the Commission:

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<sup>4</sup> See, 8 Tr 2723-24.

<sup>5</sup> See, Case No. U-18014, 3 Tr 438-439, Testimony of DTE Witness T. W. Lacey.

- A. Accept the recommendation in the PFD to reject recovery of costs for the Economic Development Program proposed by Consumers from ratepayers;
- B. Accept the recommendation in the PFD to disallow Consumers' incentive compensation costs; or alternatively, if these costs are allowed, to require Consumers to split out distribution and power supply incentives so that only the appropriate customer classes are assigned the costs; and
- C. Provide such other and further relief as the Commission may find lawful and appropriate.

Respectfully submitted,

Varnum LLP  
Attorneys for Energy Michigan, Inc.

January 18, 2017

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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 18th day of January, 2017, she served a copy of Energy Michigan, Inc.'s Reply to Exceptions, as well as this Proof of Service upon the Persons identified on the attached service list via electronic mail.

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



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

**Administrative Law Judge**

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