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October 25, 2019

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

**RE: MPSC Case No. U-20618 – In the matter of CONSUMERS ENERGY COMPANY  
for a Certificate of Public Convenience and Necessity to Construct and Operate the  
36-inch Mid-Michigan Pipeline.**

Dear Ms. Felice:

Enclosed for electronic filing in the above-captioned case is **Consumers Energy Company's Reply in Opposition to the Petition for Late Intervention of Mike Wieschowski.**

This is a paperless filing and is therefore being filed only in a PDF format. I have enclosed a Proof of Service showing electronic service upon the parties.

Sincerely,

Theresa A.G. Staley

cc: Hon. Sharon L. Feldman, Administrative Law Judge  
Parties per Attachment 1 to Proof of Service  
Mike Wieschowski, wieschowski@chartermi.net

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for a Certificate of Public Convenience and )  
Necessity to Construct and Operate the )  
36-inch Mid-Michigan Pipeline )  
\_\_\_\_\_ )

Case No. U-20618

**CONSUMERS ENERGY COMPANY’S RESPONSE IN OPPOSITION TO THE  
PETITION FOR LATE INTERVENTION OF MIKE WIESCHOWSKI**

**I. INTRODUCTION**

On August 23, 2019, pursuant to 1920 PA 9 (“Act 9”), Consumers Energy Company (“Consumers Energy” or the “Company”) filed its Application and supporting testimony and exhibits (“Application”) with the Michigan Public Service Commission (“MPSC” or the “Commission”) seeking a Certificate of Public Convenience and Necessity to Construct and Operate the 36-inch Mid-Michigan Pipeline. The Company’s Application requests authority for the construction and operation of a proposed 36-inch outside diameter pipeline to replace the existing Line 100A Pipeline between Consumers Energy’ Ovid Valve Site and the Chelsea Interchange.

The Commission’s Executive Secretary, by correspondence dated September 16, 2019, directed the Company to, in part, mail a copy of the notice of hearing (which was included in the September 16, 2019 correspondence) to “all cities, incorporated villages, townships and counties affected by the proposed service,” and to publish the Notice of Hearing “in daily newspapers of general circulation in its gas service area.” This service was to be accomplished by September 27, 2019. The Company effectuated the required mailings on September 26, 2019, and all requisite

publications were accomplished by September 19, 2019.<sup>1</sup> While not required to do so, the Company went one step further and mailed a copy of the notice of hearing to all property owners of record along the proposed construction corridor. See Proof of Service, Case No. U-20618, Docket Number 10. Among the record property owners served with the notice of hearing in this matter were Michael M. and Julie A. Wieschowski. See Proof of Service, Case No. U-20618, Docket Number 10, page 8. Pursuant to the notice of hearing, a prehearing was scheduled for October 11, 2019, at 9:30 a.m. The notice of hearing required “any person” wishing to intervene in the case, and become a party, to “electronically file a petition to intervene with this Commission by October 4, 2019.” See Notice of Hearing.

On October 7, 2019, the Company was advised that Mike Wieschowski had filed a complaint against the Company with the MPSC. MPSC Complaint No. 1050365336. The complaint sought information regarding the route of the new pipeline with regard to Mr. Wieschowski’s property. According to the complaint, Mr. Wieschowski had viewed the e-docket, but was unable to view the maps provided in the Company’s filing. Mr. Wieschowski was provided with the information requested and the complaint was resolved. On October 8 and October 9, 2019, Consumers Energy employees engaged Mr. Wieschowski and not only provided him with the information he requested, but they also discussed the notice of hearing with him. On October 9, 2019, Mr. Wieschowski indicated that he had been in contact with “the judge’s office” to be placed on the docket so he could speak.

The prehearing in this matter was held on October 11, 2019. At that time, Mr. Wieschowski appeared at the hearing and provided a statement pursuant to the Commission’s rules permitting public comment. In his presentation, Mr. Wieschowski, in part, presented an aerial photo and

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<sup>1</sup> The propriety of the Company’s service of the notice of hearing was not disputed at the time of the prehearing.

discussed concern with the re-route of the pipeline in his property. Mr. Wieschowski then objected to the “three letters” he received from Consumers Energy as the letters, presumably the notice of hearing, made “no mention of Livingston County.” 1 TR 12-13. He alleged that the letters said “work will be done in Clinton County and Washtenaw County,” and further alleged that “the notification didn’t reflect that Livingston county was involved at all.” 1 TR 13, 17. As a result, Mr. Wieschowski stated, “[s]o, I didn’t think it affected me.” 1 TR 13. According to Mr. Wieschowski, he realized that his property was involved with the pipeline project when he “went on the website.” 1 TR 13. Ultimately, Mr. Wieschowski stated, “[s]o we did not receive and understand the letter in a timely manner to allow us to become a party in his case.”

On October 15, 2019, four days after the prehearing conference, Mr. Wieschowski filed a letter in this case as a petition for late intervention. In the petition, Mr. Wieschowski states, “[w]e did not receive the notice from Consumers Energy Company in time to file to become a party.” He also alleges that “[t]he notice did not include Livingston County as being effected.” Mr. Wieschowski then says “[w]e did not receive and understand the notice letter in a timely manner to allow us to become a party to the case.” No parties were served with the petition. Consumers Energy was advised of Mr. Wieschowski’s filing of a petition for late intervention on October 18, 2019, when Administrative Law Judge, Sharon L. Feldman, sent an e-mail to the parties inquiring into possible objections to Mr. Wieschowski’s petition.

For the reasons set forth below, the Company objects to the petition for late intervention filed by Mr. Wieschowski and requests that his petition be denied.

## **II. ARGUMENT**

Rule 792.10410 of the MPSC’s Rules of Practice and Procedure, govern the process for a person who claims an interest in a proceeding to seek intervention as a party in a case. Rule 792.10410 provides, in relevant part,

A petition for leave to intervene that is not filed in a timely manner may be granted upon a showing of good cause and a showing that a grant of the petition will not delay the proceeding or unduly prejudice any party to the proceeding.

In Case No. U-10059/U-10061, the Commission determined that when a person seeks to intervene in a case before the MPSC, awareness of the filing deadline for intervention that is not pursued in a timely manner “is not sufficient reason to excuse [] tardiness,” and is, therefore, not good cause. See U-10059/U-10061, August 14, 1992 Order. In that case, the proposed intervenor “chose to continue to negotiate with Consumers rather than intervene in these proceedings,” and, thus, there was no good cause for the failure to file a timely petition to intervene and the petition was denied (for this reason and other reasons).

Similarly, in this situation, the notice of hearing was both published (on September 19, 2019), and sent to Mr. Wieschowski personally (on September 26, 2019). While Mr. Wieschowski alleges, in part, that he did not receive the notice in time to act on it, he has failed to disclose the date on which he received such notice. Notably, Mr. Wieschowski admits receiving three letters from the Company (i.e. the notice of hearing), and also implies that he did not give them immediate attention because he did not believe that they applied to his property in Livingston County. He, thus, admits to having the notice of hearing and, thus, should be charged with an awareness of the filing deadline for intervention.

Additionally, although Mr. Wieschowski claims that he did not understand the notice of hearing, upon receiving that document, he understood it enough to reach out and engage the MPSC (via a complaint against the Company) and engage Company employees in a discussion regarding his property rights from October 7 through October 9, 2019. There is no dispute that Mr. Wieschowski was in possession of the notice of hearing at that time and had enough time, and

enough of an understanding of the notice, to engage both the MPSC and the Company, but failed to file for intervention, as provided for in the notice of hearing.

A review of the notice of hearing demonstrates that the notice, prepared by the Commission's Executive Secretary, articulates in the first paragraph that construction of the Mid-Michigan Pipeline was to be located "between Ovid Township in Clinton County and the Chelsea Interchange Sylvan Township in Washtenaw County, Michigan" (emphasis added). More detail is provided in the last paragraph of page 1 of the notice of hearing. Additionally, Mr. Wieschowski alleges that he did not "receive and understand the notice letter in a timely manner to allow us to become a party to the case" (emphasis added). This is something different than not receiving notice in a timely manner, which Mr. Wieschowski has failed to establish, in that he fails to allege when he actually received the notices (three of them) from the Company. What is known is that Mr. Wieschowski was in possession of the notices in enough time, and understood those notices enough to take several other actions related to the Company's Application, including research on the MPSC's e-docket, phone calls to the MPSC and the Company, and ultimately the filing of a complaint with the MPSC (on October 7, 2019), but took no actions to intervene. This is not good cause.

### **III. CONCLUSION**

There is no dispute that the Company properly served Mr. Wieschowski in this case. There is also no dispute that: (i) Mr. Wieschowski received three copies of the notice of hearing; (ii) that the notice of hearing indicated that the proposed pipeline replacement project stretches from Clinton County to Washtenaw County, which includes Livingston County where his property is located; and (iii) that Mr. Wieschowski understood the notice of hearing enough, and had enough time, to engage in activity including the filing of a complaint with the Commission,

communicating with the ALJ's staff, researching the case on the e-docket, and communicating with the Company.

Mr. Wieschowski has failed to allege or otherwise demonstrate the date on which he received his notice, and has implied that any delay in reviewing the notice was due to his belief that the notice did not apply to his property, which is contrary to the notice of hearing he received in this matter. Mr. Wieschowski has also failed to explain why he took all of the other actions he took, but did not file for intervention in this case.

In short, Mr. Wieschowski has simply failed to demonstrate good cause for his late petition to intervene in this case. As such, his petition to intervene should be denied.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: October 25, 2019

By:

\_\_\_\_\_  
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Anne M. Uitvlugt (P71641)  
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STATE OF MICHIGAN  
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In the matter of the application of )  
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\_\_\_\_\_ )

Case No. U-20618

**PROOF OF SERVICE**

STATE OF MICHIGAN     )  
                                      ) SS  
COUNTY OF JACKSON    )

Melissa K. Harris, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on October 25, 2019, she served an electronic copy of **Consumers Energy Company's Reply in Opposition to the Petition for Late Intervention of Mike Wieschowski** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein, as well as the persons listed below.

**Electronic Service**

Mike Wieschowski  
wieschowski@chartermi.net

\_\_\_\_\_  
Melissa K. Harris

Subscribed and sworn to before me this 25<sup>th</sup> day of October, 2019.

\_\_\_\_\_  
Crystal L. Chacon, Notary Public  
State of Michigan, County of Ingham  
My Commission Expires: 05/25/24  
Acting in the County of Jackson



**Administrative Law Judge**

Hon. Sharon Feldman  
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