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February 18, 2020

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

Re: **MPSC Case No. U-20699**

Dear Ms. Felice:

Attached for electronic filing in the above-referenced matter, please find the Initial Comments on behalf of Energy Michigan, Inc. If you have any questions, please feel free to contact my office. Thank you for your assistance in this matter.

Very truly yours,

VARNUM

Timothy J. Lundgren

TJL/sej

Enclosures

c. All parties of record.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
CONSUMERS ENERGY COMPANY for)
authority to share a portion of the gain from)
the sale of certain transmission assets.)
_____)

Case No. U-20699

INITIAL COMMENTS OF ENERGY MICHIGAN, INC.

In its order on February 6, 2020 in this docket, the Commission requested that interested persons file initial comments by February 18, 2020. Energy Michigan, Inc. ("Energy Michigan")¹ hereby files these comments.

Ex Parte Filing Requirements and Transparency

In its Application filed on December 30, 2019 in this proceeding, Consumers Energy Company ("Consumers") did not caption the Application as being an "ex parte" filing. In fact, the term "ex parte" was not used until the request for relief five pages later. It therefore required members of the public who might be monitoring filings to read until the very end to understand that Consumers was asking the Commission to address its request without allowing other parties the opportunity to review, examine, challenge, or even comment on the bases for its determinations about how it should handle the gain that Consumers had received from the sale of the transmission assets. Similarly, the Commission's docket statement did not reflect that this was an ex parte request.

It is Energy Michigan's view that an open and transparent process at the Commission is best served when filings are plainly identified up front as what they are. Providing full openness and transparency of filed documents in the public interest would be consistent with Governor Whitmer's Executive Directive 2019-11, which seeks to

¹ The comments expressed in this filing represent the position of Energy Michigan as an organization, but may not represent the views of any particular member of Energy Michigan.

improve transparency and accountability in state government.² Thus, this filing should have been clearly identified as an ex parte request, and then, as the Attorney General noted, to have provided the necessary justifications in support of such a request (which this lacked).

A Refund or Application of Money to a Utility Program
Requires a Contested Case Proceeding

The money at issue here, Consumers says, was obtained by selling at above book value certain utility-owned transmission assets. Consumers further notes that these assets are (currently) Federal Energy Regulatory Commission (“FERC”) rate-regulated and not state rate-regulated. In Energy Michigan's view, the provenance of these facilities and how they were funded needs to be on the record in order for it to be clear that Consumers' offer to provide a refund to its Michigan ratepayers is "voluntary." To understand why, it is worth noting exactly how Consumers characterizes these assets in its Application. In paragraph 3, it describes them as follows:

By law, the transmission assets are subject to Federal Energy Regulatory Commission jurisdiction, and, therefore, are not rate-regulated by the Commission. Nevertheless, Consumers Energy believes that customers' interests will be best served with a one-time voluntary sharing of 50%, or \$17 million, of the gain through performing additional storm restoration services at costs above those presently included in MPSC-regulated rates.

However, in the Joint Application at FERC that Consumers filed with METC, the utility stated that, "[t]he Transmission Facilities being sold to METC pursuant to the Transaction are generally the assets Consumers Energy requested to reclassify from local distribution to transmission in *Consumers Energy Co* [footnote: See 151 FERC ¶ 61,033

² Executive Directive 2019-11: https://www.michigan.gov/whitmer/0,9309,7-387-90499_90704-488654--00.html

(2015) (approving reclassification).]"³ These assets were only reclassified from distribution to transmission as recently as 2015. *Id.* Thus, these "unregulated" facilities were almost certainly acquired with Consumers Energy's ratepayer's funds, then reclassified as transmission assets, and are now being sold off and treated as unregulated assets, the proceeds from which the utility now seeks to "voluntarily" spend as it chooses. Energy Michigan believes that this transaction deserves closer review and analysis.⁴

Furthermore, how Consumers intends to allocate these funds is a matter that should be open to be addressed by any of its ratepayers who might be affected. Ordinarily, such an examination would take place in a contested case where ratepayers could intervene, documents could be sought in discovery, and witnesses could be examined.

It is worth noting also that Consumers has filed a notice that it intends to file its next electric rate case by February 28, 2020. It seems to Energy Michigan that this issue would be more appropriately dealt with in the context of that proceeding.

Should the Commission Choose to Proceed Without a Contested Case, Then Energy MI Supports the Request for Spending Above 2020 Rate Levels on Storm Restoration Expenses, and Asks That Any Refund be Made Equally to Full-Service and ROA Customers

If the Commission should choose to proceed either without a contested case or without incorporating this determination into Consumers' soon-to-be-filed rate case, then Energy Michigan supports approval of Consumers' request for spending above the previously approved 2020 rate levels on storm restoration expenses. However, any additional money that might go to customer refunds should go evenly to full-service and retail open access ("ROA") customers. These assets, as noted above, were distribution assets (only later transferred to transmission) and so were paid for by distribution customers, which include those on electric choice. Consequently, any refund due should include electric choice customers who helped to fund those assets. Because Consumers

³ See, <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=15232981>, p.5 (emphasis added).

⁴ Energy Michigan further notes that, originally as distribution assets, these would have been paid for by both customers on electric choice and those on bundled service.

has not filed the documents showing where the investment for these assets came from, and allowed parties such as Energy Michigan to examine and test this evidence in a contested case, all evidentiary presumptions should be in favor of the customers, including the distribution customers who funded these assets originally.

Conclusion

Energy Michigan appreciates the opportunity to provide these initial comments for the Commission’s consideration. Due to the unanswered questions regarding the level of involvement of ratepayer assistance in funding the transmission assets at issue, and the ratepayer impacts on any potential refund or use of the funds, Energy Michigan respectfully requests that the Commission consider requiring a contested case process to examine Consumers' Application, and preferably, that the matter be undertaken in conjunction with the Consumers’ upcoming electric rate filing.

If the Commission chooses to proceed without a contested case, then Energy MI supports Consumers' request for approval of spending above 2020 rate levels on storm restoration expenses, but asks that any subsequent customer refunds that are approved should be shared equally between full-service and electric choice customers in recognition of the fact that these assets were funded by distribution customers and only relatively recently reclassified as transmission assets.

Respectfully submitted,
Varnum, LLP
Attorneys for Energy Michigan, Inc.

February 18, 2020

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