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April 13, 2020

Ms. Lisa Felice, Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
Lansing, MI 48917

RE: MPSC Docket No. U-20618

Dear Ms. Felice:

Attached in the above-referenced mater, please find the **Reply Brief Filed by Robert and Ruth Hummell** and corresponding Certificate of Service.

If there are any questions relative to this filing, please feel free to contact our office.

Very truly yours,

**Fraser Trebilcock Davis & Dunlap, P.C.**



H. Kirby Albright

HKA/mls  
Attachment

cc: All counsel of record  
Client

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

**REPLY BRIEF FILED BY**  
**ROBERT AND RUTH HUMMELL**

Dated: April 13, 2020

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NOW COME Robert and Ruth Hummell, Intervenors, by and through their counsel, Fraser Trebilcock Davis & Dunlap, P.C., by H. Kirby Albright, and for their Reply Brief assert as follows:

I

**The Application, proofs offered in support thereof, and the Initial Brief filed by Consumers Energy, have totally failed to appropriately address the substantiated public safety and Quiet Cove resident safety issues resulting from the proposed route and valve site location(s), as contained in the record, and therefore, the Application must be DENIED.**

The present Application must be denied because the Petitioner has not, based upon the present record, satisfied its requisite burden of proof that the proposed alignment route and valve site location, in proximity to the Quiet Cove and Moon Lake Estates mobile home parks, is consistent with public safety in general, and the safety of the residents of these two mobile home parks. The proofs offered by the Hummells included the assessment of the Shiawassee County Health Department, dated December 26, 2019 (see Exhibit HUM-1 page 3 of 6), that expressly indicated that the Health Department concluded ". . . **that the proposed gas transmission line should be re-routed from the existing septic system and septic area.**" This conclusion was not rebutted, or even addressed in any meaningful manner by the Initial Brief filed by Consumers or Staff.

The un rebutted assessment of the County Health Department must be given great deference because unlike Consumers (and Staff), it comes from an Agency that has extensive actual knowledge of the Quiet Cove waste disposal system as currently installed and operating, and the Agency has specific knowledge and expertise as to what will be necessary to protect the integrity of the waste disposal system, going forward.

As is typical in the positions taken by Consumers, it marginalizes, minimizes, or as in this situation, simply ignores legitimate public and resident safety issues, with its standard response

being essentially "we will work to mitigate landowner issues," which is really code for "we will build this project where and how we want to."

Given the specific expertise of the County Health Department as it relates to this waste disposal system at Quiet Cove, the Health Department assessment must be given substantially more weight than the generalized "we will try and work around this" provided by Consumers to justify its present Application, route and valve site location in proximity of Quiet Cove.

Further, as to the topic of public safety and the present route and valve site in proximity to Quiet Cove, Consumers has totally failed to provide any evidence or a rational explanation whatsoever to support why a re-route **for safety reasons** was appropriate for the high consequence areas ("HCA") of the City of Chelsea and the Sleepy Hollow State Park **temporary camp sites**, yet no such similar consideration was provided to the over 100 **permanent residents** of Quiet Cove and Moon Lake Estates mobile home parks. These parks are also high consequence areas, yet based upon this record, it is abundantly clear that a re-route around the parks, as proposed by Hummells, has never been given fair consideration by Consumers or Staff.

In short, the Application, proofs, and the Initial Brief filed by Consumers falls woefully short relative to the requisite protection of legitimate public and resident safety items arising directly from the present plan, yet such items have been ignored and/or marginalized by the positions taken by Consumers, and, therefore, the Application should be denied.

## II

**The present pipeline alignment route and valve site location in proximity to the Quiet Cove Mobile Home Park will result in the destruction and compromise of its waste disposal system, the unnecessary closure of the park, the wrongful displacement of its many residents, and, therefore, the Application must be denied.**

In addition to bringing forward evidence from the County Health Department that had specific knowledge and expertise as to its waste disposal system, the record, as developed by Hummells, includes a copy of the plans for the system (see Exhibit HUM-2 pages 3 and 4) and the professional engineer that actually assisted in the design and building of the system, Mr. Larry D. Stephens, PE (see Exhibit HUM-1 pages 5 and 6). The assessments of Mr. Stephens have not been addressed or rebutted by Consumers or Staff and, therefore, provide a valid basis to deny the Application, based upon safety concerns and the disproportional impact on the park residents.

It is also important to note that the present operating waste disposal system that was properly designed and built to meet the demands of the park residents, required a footprint that is approximately 150 x 200 feet for the system, plus at least a 20-foot buffer zone that is needed to properly maintain the system and to protect it from tree roots and above-ground risks. If and when the present system fails, the park would need to be able to re-construct a new waste disposal system of the same capacity and approximately the same size (i.e. 150 x 200 feet plus the buffer zone), **to stay in operation.** Currently, the Hummells have an "L-shaped" Reserve Replacement Area designed into the park that is shown on drawing to the south and east of its existing disposal system (see Exhibit HUM-2 page 3). The Reserve Replacement Area would allow a fully operational disposal system to be constructed within the Reserve Replacement Area and accommodate the necessary maintenance buffer. However, the current alignment and valve site location, as presently proposed by Consumers, even as slightly reconfigured by way of its discovery responses (see Exhibit HUM-2 page 8 of 22) will still traverse and impact the south portion of the Reserve area

and will compromise and reduce the size of the available Reserve Replacement Area to such an extent that the footprint and buffer area needed for the Reserve Replacement Area that is required by the park, to stay in operation, will be lost!! The record reflects that there is simply not enough remaining usable Reserve Replacement Area space for Quiet Cove to re-construct a waste disposal system, if the present alignment and valve site location is approved.

Moreover, as it relates to public safety and the viability of suggested mitigation actions, common sense and the record demonstrates that a septic disposal system, which is placed at shallow depths in the ground, needs to be free excess weight at ground level, and requires non-compacted soils to function properly, and the location and installation of a high pressure gas line, in close proximity to a septic system, are simply incompatible from a function, safety and design standpoint. Based upon the record, it is clear this pipeline and valve site by Warner Road are going to be subject to heavy construction activity, periodic testing and inspection and as such, all of such activities are going to needlessly, and systematically, subject the Quiet Cove waste disposal system to risk, harm, and potential damage, all of which can be avoided by the re-route around Quiet Cove, as suggested by Hummells.

Lastly, the indication and alleged "justification" by Consumers that the planned Warner Road valve site location is appropriate because of its "accessibility of I-69 . . ." (see Exhibit HUM-4 page 6 of 22) is simply not accurate because there is NO FREEWAY exit at Warner Road; the freeway exits are approximately SIX (6) miles to the east and one and a half (1.5) miles to the west. Further, Consumers' position that "spacing requirements" as to valve sites mandates the presently proposed valve site at Warner Road is also not supported by the record. An examination of the valve site locations depicted on Exhibit A-3 (JMH-1 page 1 and 2 of 59), as to Mr. Hagloch's Direct Testimony, reflects that the proposed valve site locations between the Dansville valve site

and the Stockbridge valve site (see Exhibit A-3 (JMH-1) page 1 of 59) AND between the Territorial valve site and Chelsea Interchange Station are both **in excess of the four mile distance Consumers suggests is "required" for its valve site locations.** Similarly, the valve site locations as shown on Exhibit A-3 (JMH-1 page 2 of 59) to Mr. Hagloch's direct testimony would appear to show that the distance between the Ovid valve site location and the Laingsburg valve site is slightly over 4.6 miles and the distance between the currently planned Warner Road valve site (by Quiet Cove) and the Sherwood valve site, is, again, (approximately 4.2 miles) in excess of the four mile "standard" put forward by Consumers.<sup>1</sup>

Clearly, based upon Consumers' own records, there is considerable flexibility in the placement of valve sites, and, therefore, the proposed Warner Road site can be appropriately re-located to vacant land in the same general area so as to avoid the significant impacts the present site would have on Quiet Cove, yet still meet the general requirements of Consumers.

There is absolutely no rational reason or justification why this Warner Road valve site could not be placed on vacant land on the south side of the I-69 freeway, in approximately the same location, and, thereby, keep the Class 3 spacing desired by Consumers, but avoid the destruction of the Quiet Cove mobile home park operation and the wrongful displacement of its multiple residents, particularly when an alternative route is available that would avoid all such impacts.

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<sup>1</sup> These measurements and approximations are premised upon the accuracy of the scale reflected in Exhibit A-3 (JMH-1) page 1 and 2 being one inch equals three miles.

### III

**The Application, proofs, and record submitted by Consumers fails to address public safety and resident safety concerns relative to the PIR and lack of escape route and, therefore, the Application should be denied.**

Given the confined living space arrangements inherent to the mobile home park lifestyle, it is noted that regulations and statutes that govern operation of mobile home parks, including the Mobile Home Commission Act 96 of 1987, as revised, prohibit the storage of flammable or hazardous materials on site as a safety-related prohibition; yet now, with this proposed route and valve site location, the residents of Quiet Cove will be burdened with the new (and unnecessary) safety concern resulting from the Potential Impact Radius ("PIR") of 769.6 feet **on each side of the new pipeline**, as installed (see Exhibit HUM-4 page 10 of 22), or across the Quiet Cove property, all of which can be avoided by the alternative route suggested by Hummells. Also, Consumers proposed project, as currently planned, will result in no viable escape route for the Quiet Cove and Moon Lake residents, and Consumers has simply failed to ever address these fatal deficiencies in its Application and proposed plan, and, therefore, the Application should be denied.

### IV

**The Alternate Route put forward by Hummells is reasonable, practicable, and serves the best interests and safety of the public and the residents of Quiet Cove and Moon Lake Estates Mobile Home Parks.**

Contrary to the assertions of Consumers and Staff, the route put forward by Hummells is reasonable and is, in fact, superior to the route and valve site location put forward by Consumers. It must be noted that the route put forward by Hummells has not been accurately or appropriately examined by Consumers (or Staff) and the Hummell alternative plan has either been misinterpreted

by Consumers (and Staff) or deliberately manipulated by Consumers to wrongfully exaggerate the supposed impacts of the alternative route put forward by Hummells.<sup>2</sup>

This conclusion is established by a careful and accurate review of the Hummell proposed route in Exhibit HUM-3 page 4 of 6 and page 6 of 6, which shows the route traversing vacant land, and to the rear and around the residences in the general area. The proposed Hummell route is to be contrasted with Consumers' inaccurate and manipulated drawing represented by Exhibit A-16 (JMH-8) page 1 of 1 that places the proposed Hummell route further east than depicted by Hummells – it crossed I-69 at a different location and uses different angles and location than the route proposed by Hummells and, therefore, those manipulations result in wrongful assertion that the Hummel route impacts other residences, which is simply false and untrue. So, it is important that there truly be a careful and accurate examination of underlying basis (i.e. an incorrect drawing) that allegedly supports the assertion by Consumers (and Staff) that the alternative route put forward by Hummells is not reasonable or otherwise impacts other residences, because that is simply not true.

Moreover, the benefits of the alternative route put forward by Hummells are truly substantial, including:

- moving the line and associated infrastructure away from the high consequence areas and out of the middle of the Moon Lake Estates Mobile Home Park;
- it relocates the valve site from the Quiet Cove high consequence area;
- it relocates the line and valve site away from the Quiet Cove drain field and Reserve Replacement Areas, allowing the park to remain in operation;
- the alternative route reduces the impacts of the PIR and protects the escape route for Quiet Cove and Moon Lake residents;

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<sup>2</sup> Please recall that the differences between the Hummell route and Consumers' interpretation of that plan was subject to considerable and vigorous cross-examination of John Hagloch, and it included the admission that Consumers' modeling of the Hummell plan was based upon an estimate of the Hummells' proposed route, and it was not exact.

- this re-route may, in fact, be a shorter distance than the proposed route so the cost of pipe is likely to be reduced;
- an accurate application of the route proposed by Hummells **would not** require the acquisition of any additional residences because it would go through vacant land that has clear spots for ease of construction;
- the proposed Hummell route is equally accessible to the route proposed by Consumers and valve site spacing under the Hummell alternative can be and is favorably accommodated;
- the proposed route suggested by Hummells runs generally northwesterly and southeasterly, so it parallels the existing line, but puts it in a safer and more remote location and does join up with the existing easement held by Consumers, all of which were central design objectives of this proposed Project.

In summary, the assertion that the route as proposed by Hummells is not reasonable is simply wrong and not supported by the record, common sense, and a careful and accurate examination of the record.

## V

**The overall nature and tone of the Application and Initial Response by Consumers and Staff has been to simply avoid and ignore the significant public health and disproportional impacts of the proposed project, alignment and valve site plan on Quiet Cove and its residents, and, therefore the Application should be denied.**

While there has been focus in this Reply Brief on the positions taken by Consumers and Staff in their respective Initial Briefs, it is also respectfully asserted that it is important to note what items/issues have not been addressed or rebutted by Consumers and Staff, in conjunction with the overall examination of the record and the ultimate decision of whether the Application should be granted as being in the overall best interests of the public and consistent with public safety. In that regard, it is asserted that Consumers has ignored, marginalized, and minimized the valid public safety positions of Hummells, including:

- The lack of a viable or justifiable explanation for the lack of a re-route around these mobile home parks, as was done with the two other high consequence areas and the resulting bias and indifference to the safety of the residents of these parks;
- The lack of any viable or justifiable reason to impose the implications of the PIR on the residents of Quiet Cove, particularly since there is an alternative route that would avoid the PIR implications for the Quiet Cove residents;
- The lack of acknowledgement by Consumers, and the indifference demonstrated toward the residents of the park, as to the alignment route and valve site location as presently proposed, will absolutely compromise and destroy the septic waste disposal system at Quiet Cove Mobile Home Park, particularly when a reasonable and safe alternative route is available;
- The lack of acknowledgment by Consumers and Staff that this Project, as presently proposed, will result in the likely closing of the Quiet Cove Mobile Home Park;
- The lack of acknowledgement and proof in the record, that the suggested **generalized** mitigation suggestions as put forward by Consumers, are or will be effective to truly ensure the integrity of the waste disposal system and continued operation of the Quiet Cove Park, particularly when a reasonable alternative route, that would assure continued operation of the park, is available;
- The lack of acknowledgment and indifference demonstrated by Consumers and Staff toward the County Health Agency's assessment, and the Engineer that designed the waste disposal system, that the gas line should be re-routed away from the existing septic system and reserve septic area, particularly since a reasonable and safe alternative route, which would avoid systems impacts, is available;
- The lack of acknowledgement by Consumers and Staff that the Hummells' property is specifically Zone **R-T Mobile Home Development** by Shiawassee County (see Exhibit HUM-1 page 4 of 6) with the intent of this zoning district to ". . . **provide for mobile home parks and mobile home subdivisions in areas of the county where public utilities and public services are available and to ensure that the residents of such areas will be provided with certain minimum standards of design, safety and convenience.**"

As pointed out in this Reply Brief, and the Initial Brief, the viability and sustainability of the entire Quiet Cove Park operation is now going to be wrongfully placed at risk, if the proposed alignment

route and valve site in proximity to Quiet Cove is approved, and there are no mitigation actions by Consumers, that will fully protect the residents and the septic system, except for the re-route of the project as put forward by Hummells. Accordingly, not only will Quiet Cove suffer a loss, but the community – at large – will suffer a loss, because the community has expressly defined this parcel as being suitable for mobile home use. This serves as further justification for DENIAL of the Application.

VI

CONCLUSION - RELIEF REQUESTED

After a careful and full examination of the record, and the lack and deficiencies thereof as to the burden of proof imposed upon the Applicant, Robert and Ruth Hummell request that the Application be DENIED. In the alternative, if there is an inclination to grant the Application, such a determination must **be premised upon the expressed requirement and condition that Petitioner re-route the proposed alignment and Warner Road valve site to the west and off the real property owned by the Hummells, and consistent with the alternative route put forward by the Hummells.**

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.



Dated: April 13, 2020

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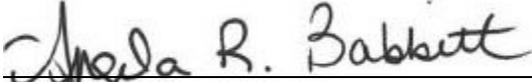
**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter on the application of )  
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a Certificate of Public Convenience and )  
Necessity to Construct and Operate the )  
36-inch Mid-Michigan Pipeline )  
\_\_\_\_\_ )

Case No. U-20618

**CERTIFICATE OF SERVICE**

Angela R. Babbitt hereby certifies that on the 13<sup>th</sup> day of April, 2020, she served the **Reply Brief of Intervenors, Ruth and Robert Hummell** and corresponding Certificate of Service in the above docket on the persons identified on the attached service list by electronic mail.

  
\_\_\_\_\_  
Angela R. Babbitt

## Service List for U-20618

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