S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of **DWIGHT & SHARON SIMMONS** against **CONSUMERS ENERGY COMPANY.**	))))	Case No. U-21587

At the June 11, 2026 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Shaquila Myers, Commissioner

ORDER

I. HISTORY OF PROCEEDING

On February 8, 2024, Dwight and Sharon Simmons (Complainants or Simmonses), individually and jointly, filed a formal complaint in this case (complaint), with an attached letter (letter) and other documents, against Consumers Energy Company (Consumers or Respondent) alleging that the electric bills at their vacation home[1] were 50% to 100% higher than other similar months in the current or previous years, potentially due to faulty utility equipment. *See*, complaint, p. 1; *see also*, letter, p. 1 (pagination applied in natural order). In the complaint, the Simmonses alleged that Consumers violated the Commission's Consumer Standards and Billing Practices for Electric and Natural Gas Services (billing rules), Mich Admin Code, R 460.102(e)(i),

[1] The dwelling at issue is referred to as the Simmonses' residence throughout this order. It is understood that the residence is a vacation home and is unoccupied for periods of time.

(ii), and (v) (Rule 2(e)(i); (ii), and (v)); R 460.121 (Rule 21); R 460.148(2)(h);[2] R 460.150(1), (2), and (4) (Rule 50(1), (2), (4)); and the Commission's Technical Standards for Electric Service (Technical Standards), Mich Admin Code, R 460.3601(3) (Rule 601(3)). The Simmonses requested that Consumers review their meter readings in order to discover the reason for the high bills, to bill them correctly, and to comply with Mich Admin Code, R 460.126a(1) and (2) (Rule 26a(1) and (2)). *See*, letter, p. 4.

On April 17, 2024, Consumers filed its answer to the complaint, denying "all allegations." Answer, p. 1.[3]

On April 23, 2024, a prehearing conference was held before Administrative Law Judge Jonathan F. Thoits (ALJ) at which the Simmonses appeared, in *pro per*. Consumers and the Commission Staff (Staff) also participated in the proceeding. On May 23, 2024, a second prehearing was held before the ALJ. Following the discovery period, the Simmonses and Consumers each filed motions for summary disposition, and a motion hearing was held on October 23, 2024. On November 4, 2024, the ALJ filed, under seal, his denial of both parties' motions. Status conferences were held on August 7, 2024, and November 21, 2024. The parties also filed pretrial briefs.

On December 10 and 17, 2024, evidentiary hearings were held before the ALJ. Each party, including the Staff, provided testimony and exhibits which were admitted to the record. The parties were provided an opportunity to cross-examine witnesses. On January 3, 2025, Consumers filed its exhibit list and additional proposed Exhibits C-22 through C-26 as requested by the ALJ.

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[2] Mich Admin Code, R 460.148(2)(h) does not exist and will not be addressed further.

[3] Consumers' answer was not paginated; therefore, pages are referred to in natural order beginning with the first page of the answer.

See, 6 Tr 473; *see also*, Case No. U-21587, filing #U-21587-0058, scheduling memo. In its cover letter, Consumers noted that:

> [t]hese exhibits are being provided at the ALJ's request, including [Exhibits] C-25 and C-26 which were requested by the ALJ in the scheduling memo for the December 10th and 17th hearings. Exhibits C-24 through C-26 are not exhibits that the Company otherwise would have included in its case or exhibits that the Company believes are relevant to any issue that the Simmons [sic] raised in their complaint.

Case No. U-21587, filing #U-21587-00058, scheduling memo; *see also*, cover letter.[4] On February 24, 2025, Consumers filed its post-hearing brief that included its updated exhibit list with the additional proposed Exhibits C-22 through C-26. Also on February 24, 2025, the Staff filed its post-hearing brief and the Simmonses filed an initial brief. On July 15, 2025, the Simmonses filed their official exhibits and exhibit list.

On July 15, 2025, the ALJ filed a Proposal for Decision (PFD). The PFD indicated that exceptions were due on or before August 5, 2025, with replies to exceptions due on or before August 19, 2025. On July 22, 2025, the Simmonses filed exceptions to the PFD. On August 5, 2025, Consumers and the Staff filed exceptions. On August 12, 2025, the Simmonses filed replies to exceptions. On August 19, 2025, Consumers filed replies to exceptions. On August 19, 2025, the Simmonses filed amended replies to exceptions.

In this proceeding, there are 474 pages of transcript and 35 exhibits admitted into the record during the evidentiary hearing, with a total of 40 exhibits admitted into the record after Consumers provided Exhibits C-22 through C-26 on January 2, 2025, per the ALJ's directive. The ALJ noted that if there were objections, the parties were to weigh in by email and the objections would be

[4] Exhibit C-24 is Consumers' records for the Simmonses' enhanced message management analysis (EMMA), Exhibit C-25 sets forth tolerance limits calculations, and Exhibit C-26 sets forth tolerance limits for the residence.

addressed. 6 Tr 472. There were no timely objections filed regarding Consumers' January 3, 2025 filing.

II. LEGAL AUTHORITY

A. Administrative Hearing Rules

Mich Admin Code, R 792.10432 (Rule 432) provides in pertinent part:

> (1) In a pending proceeding, a request to the commission or presiding officer for a ruling or order, other than a final order, must be by motion. Unless made during a hearing, a motion must comply with all of the following provisions:
> (a) Be in writing.
> (b) State with particularity the grounds and authority on which the motion is based.
> (c) State the relief or order sought.
> (d) Be signed or electronically signed by the party or the party's attorney.
> (2) Except as provided under subrule (7) of this rule, unless a different time is set by the commission or presiding officer or unless the motion is one that may be heard ex parte, a written motion, notice of the hearing on the motion, and any supporting brief or affidavits shall be served as follows:
> (a) Not less than 9 days before the hearing, if served by mail or courier delivery service.
> (b) Not less than 7 days before the hearing, if served electronically or by delivery to the attorney or party under MCR 2.107(c)(1) or (2).
>
> * * *
>
> (8) A motion addressed to the commission shall be filed and served on all parties and the director of the regulatory affairs division. Any responsive pleading shall be filed and served on all parties and the director of the regulatory affairs division within 7 days after the motion is filed unless otherwise provided by these rules.
> (9) In instances where the presiding officer has transmitted a case to the commission, the director of the regulatory affairs division may approve uncontested scheduling changes, stipulations, and other minor requests by parties to the proceedings without notice, a hearing, or a commission order.

Mich Admin Code, R 792.10441(2) (Rule 441(2)), provides in pertinent part:

A formal complaint must set forth all of the following:

> (f) A clear and concise statement of the relief sought and the authority upon which the complainant relies for the relief.

Mich Admin Code, R 792.10446 (Rule 446), provides:

> The complainant generally has the burden of proof as to matters constituting the basis for the complaint and the respondent has the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed, or may shift, as provided by law or as may be appropriate under the circumstances.

B. Consumer Standards and Billing Practices for Electric and Natural Gas Service

Mich Admin Code, R 460.102 (Rule 2(e)) provides in pertinent part:

> "Billing error" means an undercharge or overcharge that is caused by any of the following:
> (i) An incorrect actual meter reading by a company representative.
> (ii) An incorrect remote meter reading.
>
> * * *
>
> (v) A meter switched by the utility or a utility representative.

Mich Admin Code, R 460.115 (Rule 15) provides:

> (1) Meters with actual meter readings that are rejected by the utility billing system for 2 consecutive months because they are outside the expected range of the customer's usage for the premises shall be reviewed by a billing specialist, investigated, and, if necessary, the utility shall repair or replace the meter.
> (2) A utility shall calculate the period and amount of inaccuracy of electric meters pursuant to R 460.3101 to R 460.3804. A utility shall calculate the period and amount of inaccuracy of gas meters pursuant to R 460.2302 to R 460.2384.
> (3) If a utility finds that an electric or gas meter has an average meter accuracy less than 98% or more than 102%, an adjustment for bills for the inaccuracy may be made in the case of under registration and must be made in the case of over registration.
> (4) Notwithstanding the provisions of any other rule, except in the case of unauthorized use of utility service, back billing of customers or refunds to customers for meter errors is limited to the 12-month period immediately preceding discovery of the error. The customer shall be given a reasonable time in which to pay the amount of the back billing, after consideration of the amount of the back bill and the duration of the inaccuracy, and service shall not be shut off during this time for nonpayment of the amount of the back billing if the customer is complying with the repayment agreement.
> (5) If the amount due the utility is more than $5.00, the utility may bill the customer for the amount due. The utility shall offer the customer reasonable payment arrangements for the amount due. The bill for the undercharge may not include interest.

> (6) If the amount of the refund due an existing or previous customer as the result of meter over registration is less than $5.00, a refund is not required to be made. Paid overcharges must be credited to the existing customer or paid to a previous customer with 5% interest, commencing on the sixtieth day following payment.

Mich Admin Code, R 460.121 (Rule 21) provides:

> Upon a residential customer's request, a utility shall bill a residential customer with a satisfactory payment history under an equal monthly billing program, if the commission finds that the billing program assures reasonable billing accuracy. If a residential customer has a credit balance of more than $10.00 at the end of the program year, upon the request of the customer, the utility shall either return the credit balance or credit it to the next month's bill. If the balance is less than $10.00, the utility shall credit the amount to the residential customer's account.

Mich Admin Code, R 460.126a (Rule 26a), states in pertinent part:

> (1) If a utility overcharges a customer due to a billing error, then the utility shall refund or credit the amount of the paid overcharge to the customer. Paid overcharges shall be credited to a customer with 5% APR [annual percentage rate] interest, commencing on the sixtieth day following payment. A utility is not required to adjust, refund, or credit an overcharge plus 5% APR interest for more than the 3 years immediately preceding discovery of the billing error, unless the customer is able to establish an earlier date for commencement of the error.
> (2) Upon customer request, paid overcharges for billing errors greater than $10.00 shall be refunded within 30 days of the request.

Mich Admin Code, R 460.150 (Rule 50), states in pertinent part:

> (1) A utility shall establish complaint procedures, promptly and thoroughly investigate customer complaints, and, when possible, resolve all customer inquiries, service requests, and complaints and report the resolution of commission-referred complaints to the commission staff.
> (2) The utility shall keep records of customer complaints that will enable the utility to review and analyze its procedures and actions. The records shall be available to the commission.
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> * * *
>
> (4) A utility shall provide to customers who are not satisfied with the utility's resolution of a complaint or inquiry the toll-free telephone number and internet address of the commission.

C. Technical Standards for Electric Service

Mich Admin Code, R 460.3601 (Rule 601(3)), provides in pertinent part:

> A report of the results of the test must be made to the customer within a reasonable time after the completion of the test, and a record of the report, together with a complete record of each test, must be kept on file at the office of the electric utility or cooperative.

Mich Admin Code, R 460.3602 (Rule 602), in effect from 2008 to April 10, 2023, provides:

> Every meter shall be inspected and tested, and associated device(s) shall be inspected, in the meter shop of the utility, or a meter testing facility certified by the utility, before being placed in service. The accuracy of each meter shall be certified to be within the tolerances permitted by these rules, except that the utility may rely on the certification of accuracy by the manufacturer on all new meters.

Mich Admin Code, R 460.3602 (Rule 602), in effect from April 10, 2012 to present, provides:

> Every meter must be inspected and tested, and associated devices must be inspected, in the meter shop of the electric utility or cooperative, or a meter testing facility certified by the electric utility or cooperative, before being placed in service. The accuracy of each meter must be certified to be within the tolerances permitted by these rules, except that the electric utility or cooperative may rely on the certification of accuracy by the manufacturer on all new meters.
>
> (1) Watthour meters that are used for measuring electrical quantities supplied shall conform to ANSI [American National Standards Institute] specifications and meet all of the following requirements:
>
> (a) Be of proper design for the circuit on which the meters are used; be in good mechanical and electrical condition; and have adequate insulation, correct internal connections, and correct register.
>
> (b) Not creep at no load with all load wires disconnected at a rate of one complete revolution of the moving element in ten minutes when potential is impressed.
>
> (c) Be accurate to within plus or minus 1.0%, referred to the portable standard watthour meter as a base, at two unity power factor loads: light load (l.l.) and heavy load (h.l.).
>
> (d) Be accurate to within plus or minus 2.0%, referred to the portable standard watthour meter as a base, at inductive load (i.l.).
>
> (2) Polyphase meters shall have their elements in balance within 2.0% at rated test amperes at unity power factor and at approximately 50% lagging power factor.
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> (3) Meters that are used with instrument transformers shall be adjusted so that the overall accuracy of the metering installation meets the requirements of this rule.
>
> (4) Meters and associated devices shall be adjusted as close as practical to zero error and within the accuracy limits specified in subrule (1)(c) of this rule.

Mich Admin Code, R 460.3607, (Rule 607) in effect from April 10, 2023 to present, provides in pertinent part:

> (1) Watthour meters that are used for measuring electrical quantities supplied must conform to ANSI C12.1 or C12.20 specifications and meet all of the following requirements:
>
> (a) Be of proper design for the circuit on which the meters are used; be in good mechanical and electrical condition; and have adequate insulation, correct internal connections, and correct register.
>
> (b) For electro-mechanical meters, not creep at no load with all load wires disconnected at a rate of 1 complete revolution of the moving element in 10 minutes when potential is impressed.
>
> (c) Be accurate to within plus or minus 1% for electro-mechanical meters and 0.8% for solid state meters, referred to the portable standard watthour meter as a base, at 2 unity power factor loads: light load (l.l.) and full load (f.l.).

Meter Class	Light Load Amperes	Full Load Test Amperes	Inductive Load 50% Lagging Power Factor Test Amperes
Self-Contained	10% Rated Test Amperes of Meter	100% Rated Test Amperes of Meter	100% Rated Test Amperes of Meter
Transformer-rated	10% Rated Test Amperes of Meter	100% Rated Test Amperes of Meter	100% Rated Test Amperes of Meter

> (d) Be accurate to within plus or minus 2% for electro-mechanical meters and 1.6% for solid state meters, referred to the portable standard watthour meter as a base, at inductive load (i.l.).

III. CASE PRESENTATIONS

A. Dwight and Sharon Simmons

Mr. Simmons testified that their residence has had three electric meter replacements since their purchase of their vacation home in 2009,[5] at which the Simmonses and certain relatives typically stay at various times throughout the warmer months of the year and occasionally at Thanksgiving and Christmas, for approximately 8-10 weeks in total per year. 5 Tr 126-128. Mr. Simmons testified that their vacation home is heated year-round to 68 degrees[6] when vacant

[5] *See*, Mrs. Simmons's testimony regarding the meter replacements at 5 Tr 155-156.

[6] All temperature measurements are in Fahrenheit.

and 70 to 78 degrees when occupied, that it was formerly heated by one or more baseboard heaters, but beginning in 2021 or 2022, two (electric resistance) space heaters have also been used for heat. *See*, 5 Tr 129-130. Mr. Simmons explained that the space heaters used are about eight inches long by eight inches wide, that he did not know their power consumption, and that their other household appliances had been updated. *See*, 5 Tr 169-171. He further asserted that the space heaters[7] are only used when they are at the vacation home, but the baseboard heaters are always on during the winter months. *See*, 5 Tr 172.

Additionally, the Simmonses asserted that electrical upgrades, the addition of energy efficient appliances, and attic insulation made over time resulted in little reduction in their energy bills. *See*, Exhibit C-8, pp. 23-24. Mr. Simmons stated that he was told by a customer representative that the problem was a grounding wire on the company side. *See*, 6 Tr 463.

Mrs. Simmons also testified in support of the complaint. Mrs. Simmons testified that Mr. Simmons hired an independent company, Amp Electric, to test all the breakers at the property, which resulted in a breaker being tripped in the living room.[8] She further stated that they were working with Consumers to schedule testing at the time but did not inform Consumers of the test. *See*, 5 Tr 137-141; *see also*, Exhibit A-A and Exhibit C-14. Mrs. Simmons opined that a "special test" like the one that revealed the breaker fault may have resolved their issues. 5 Tr 156. She also posited that spikes in use were due to meter error. 5 Tr 161.

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[7] It is noted that while Mr. Simmons testified to two space heaters being used, the AMP Electric invoice indicated that three space heaters were being used at the residence while the Simmonses were in the residence. *See*, 5 Tr 166, 218.

[8] It should be noted that the breakers for the interior of the dwelling are all on the customer's side of the meter, within the customer's control.

Concerning the alleged violation of Rule 2(e)(ii),[9] Mrs. Simmons testified that she did not know which bills were actual meter readings and which were remote readings. Additionally, she indicated that they did not attempt to read their meters to compare with the company's use data but stated that they had "attempted to communicate with [Consumers] on several various different occasions throughout the years." 5 Tr 151-152.

Concerning allegations that the company violated Rule 601(3), Mrs. Simmons testified that they had received communication from the Commission but stated that they wanted actual documents from the test. *See*, 5 Tr 158.

B. Consumers Energy Company

Ms. Ekaterina Miller, manager for Consumers' electric operations overseeing the workforce that is responsible for installation and maintenance of electric metering, testified on behalf of the company. Ms. Miller stated that on March 1, 2024, she personally observed a Consumers employee test the Simmonses' currently installed meter, recorded the results, and thereafter prepared an affidavit. *See*, 5 Tr 212-213. She testified that she observed that "[t]he meter was accurate within Michigan Public Service Commission standards." 5 Tr 214; *see also*, Exhibit C-1.

Additionally, Ms. Miller testified that she had examined the invoice and completion notes by AMP Electric, submitted as Exhibit A-A, and observed that AMP Electric did not perform a breaker-by-breaker test and noted that the "[t]he consumption of electricity is fairly consistent across four different meters[,]" asserting that "[t]hat the voltage and quality of service provided by

[9] It is noted that Rule 2(e)(ii) defines what constitutes a "billing error" from a remote meter reading. Rules 2(e)(i) and (v), which were also cited by the Simmonses, define billing errors for actual meter readings and for meter switching, respectively. These rules do not address utility requirements and/or obligations related to these billing errors. Consumers addressed this issue in cross examination. *See*, 5 Tr 153-154.

the utility is within Michigan Public Service Commission standards." 5 Tr 222-223; *see also*, 5 Tr 217-221, 224, and Exhibits C-12 and C-13.

Ms. Miller testified that the company conducted an on-site investigation into the neutral connection. 5 Tr 213. She testified that no grounding issues were found on the Simmonses' meter or on company systems near the Simmonses' meter but indicated that the company nevertheless replaced neutral connections as part of the investigation. *See*, 5 Tr 227-228. She further testified that a grounding issue on the company side would not affect usage as measured by the customer's meter because "[t]he meter measures from the line side to the customer's load side and does not have a reference to the grounded neutral." 5 Tr 226. She added that a grounding issue on the customer side could cause inefficient energy use at the meter if there was a bad connection but stated that the company was not able to conduct any testing on the customer side of the meter. The only way to diagnose a grounding issue on the customer side was to conduct a breaker-by-breaker test, but AMP Electric did not perform a breaker-by-breaker test despite it being described as such because a:

> breaker-by-breaker test would operate each of the breakers at the residence starting with turning off the main breaker, validating that there is no recording on the meter of energy, and then operating each one of the breakers to understand what appliances utilized the most energy or where the problem may be if there is a problem.

5 Tr 224-225. Ms. Miller testified that Consumers could not perform the test without consent and cooperation by the customer and, without the test, the company could not complete its investigation. 5 Tr 225-226. She stated that, "[t]he meters that have served the Simmons are accurate based on all the testing, and the usage is consistent year-over-year comparing similar months across all 4 four meters." 5 Tr 236.

Ms. Amy Bertram, customer relations supervisor for Consumers who is in charge of the company's customer care complaints in its executive customer assistance center (ECAT), testified concerning the company's records of contacts with the Simmonses as set forth in Exhibit C-16. *See*, 5 Tr 276. Ms. Bertram testified that two customer service conversations with Mr. Simmons took place on December 13, 2022, which covered his concerns about a high bill, potential reasons for the high use, and Consumers' suggestions to lower the bill, such as draining water lines and turning service off when the residence is unoccupied. *See*, 5 Tr 278; *see also*, Exhibit C-16. Ms. Bertram also testified that a customer care advocate conversation with Mr. Simmons took place on January 10, 2024, wherein discussion took place about exchanging the meter and having it tested, along with suggestions for lowering the cost of energy such as lowering the temperature in the dwelling residence when the property is vacant. *See*, 5 Tr 278-279. On January 19, 2024, a Consumers' customer care advocate spoke to Mr. Simmons, communicating the meter test results, which were within accepted limits, and stating that there was a potential issue with breaker number six, as well as offering ways to lower the power bill. The customer care advocate suggested that the Simmonses seek assistance from an electrician. *See*, 5 Tr 279-280; *see also*, Exhibit C-16.

Ms. Bertram testified that she reached out to the Simmonses and "tried to align with [Ms.] Miller an on-site investigation with a third-party electrician and our employees to . . . help the Simmons identify what the problem was." 6 Tr 310. She testified that she spoke with Mr. Simmons three times, and offered to reimburse the Simmonses for the cost of the electrician, but was unable to align with the third-party electrician, and was requested to stop calling by Mrs. Simmons. *See*, 6 Tr 311-312; *see also*, Exhibit C-16, pp. 28-30.

Ms. Bertram explained that, since 2019, budget plans are reconciled quarterly. She testified that if the budget plan payments were out of alignment with actual costs, then an adjustment would be made and the customer notified on their bill. *See*, 6 Tr 317. She further testified that there were no questions on record from the Simmonses concerning their budget plan. *See*, 6 Tr 318. Ms. Bertram also testified that when the bill is reconciled, if the change to the budget plan payment is $25 or greater, an adjustment to the monthly plan bill would be made. *See*, 6 Tr 319-320. She further explained that the company has consumption data beginning on May 4, 2010, but not billing data because billing retention is six years. *See*, 6 Tr 346.

Ms. Bertram stated that it was her understanding that the customer requested the meter be changed. *See*, 6 Tr 357; *see also*, Exhibit C-17, p. 4. She also explained the company's investigation process when a meter reading is extremely off, which is the EMMA process. *See*, 6 Tr 357-358, 396.

Ms. Bertram testified about meter no. 62129543, which was field tested on January 12, 2024. Ms. Bertram clarified that the meter removal was requested at the time testing was scheduled and Mr. Simmons declined to be on site when the meter was tested. *See*, 6 Tr 360-361; *see also*, Exhibit C-18, p. 10.

Regarding Rule 15, Ms. Bertram testified that the expected range of power use is based on the historical use. *See*, 6 Tr 422. She further testified that the company does not take action on the information because it does not relate to Rule 15, and consumption is the customer's responsibility. *See*, 6 Tr 425-426.

Mr. Bradley Herson, supervisor of Consumers' customer billing, also testified. Mr. Herson stated that he did not know whether an address analysis was completed for the Simmonses. However, Mr. Herson clarified that the analysis is not required by Commission rules and regulations but is performed by the company of its own volition. 6 Tr 397.

On whether the Simmonses' electric use of 38 kilowatt-hours from July 29, 2021 and August 24, 2021, would be out of the norm, Mr. Herson stated that there are customers who use 38 kilowatts for one month and clarified that the information was obtained from the company's systems, applications, and products (SAP) operating system. *See*, 6 Tr 398-400; *see also*, Exhibit C-9.

Regarding Rule 15 and back-bills that are more than a year old, Mr. Herson stated that "[w]e don't go back unless it's in the customer's favor over a year." 6 Tr 408. Mr. Herson testified about the circumstances whereby SAP may reject a meter reading for two consecutive months. Mr. Herson explained that Consumers investigates to determine if there is damage, check variants, compare to daily read record, and analyze anomalies. 6 Tr 412-413. Mr. Herson also stated that the EMMA cases related to the Simmonses' property were "resolved positively, we didn't have any that were flagged as outside." 6 Tr 416.

Lastly Luis Arcienega, Consumers' manager of engineering, testified. He described the meter technology center (MTC) where meters are tested and the processes employed for testing. He testified that the equipment in the MTC is recalibrated every six months. *See*, 6 Tr 428. He went on to describe additional testing information and records. *See*, 6 Tr 430-434. Mr. Arcienega also testified that company records are automated in SAP and do not require physical signatures. *See*, 6 Tr 439-440. Mr. Arcienega clarified that the manufacturer tests its meters before sending them to Consumers. Mr. Arcienega stated that Consumers then spot tests meters from the manufacturer. *See*, 6 Tr 450.

C. Commission Staff

Mr. Nicholas Evans, the manager of the Commission's Electric Operations section, testified on behalf of the Staff. *See*, 5 Tr 190-210. Mr. Evans testified that the evidence indicates that:

(1) meter no. 306595 was installed prior to the Simmonses' purchase of the residence, removed on July 24, 2013, and was not tested after it was removed; (2) meter no. 10108908 was installed on July 24, 2013, removed on August 25, 2021, and was tested prior to installation but not after removal; (3) meter no. 62129543 was installed on August 25, 2021, removed on January 12, 2024, and was tested before installation, before its removal from the Simmonses' residence, and again following its removal; and (4) meter no. 30790065 was installed on January 12, 2024, was tested prior to installation, was field tested twice, and is the current installed meter. *See*, 5 Tr 200-201.

Mr. Evans testified that the applicable meter testing rules are Rule 15(3) and Rule 15a(1) of the billing rules and Rules 601, 604, and 607(4) of the Technical Standards. *See*, 5 Tr 201. He further testified that Consumers communicated the January 12, 2024 meter testing results to the Simmonses in the field and stated that Exhibit S-1.4 shows meter testing results for the meter, thus asserting that the company was in compliance with Rule 601. *See*, 5 Tr 202; *see also*, Exhibits S-1.3, S-1.4.

Additionally, Mr. Evans testified that the company did not violate Rule 607(1) because the evidence shows that meter testing for meter nos. 62129543 and 30790065 fall within an accuracy range of 99.974% and 100.07%, respectively; and testing for meter nos. 62129543 and 30790065 fall within the required range of accuracy for solid state meters. *See*, 5 Tr 202-203; *see also*, Exhibits S-1.1-1.4.

Mr. Evans also testified that the company did not violate Rule 604 because meter no. 10108908 was not required to be tested after removal as it was removed for the installation of advanced metering infrastructure (AMI, also referred to as a smart meter throughout this order), and meter no. 10108909 did not require testing after removal as it was retired for obsolescence when it stopped communicating. *See*, 5 Tr 203.

Mr. Evans further testified that the company did not violate Rules 15 and 15a because meter nos. 62129543 and 30790065 tested accurately, within the 2% tolerances specified by the rules. *See*, 5 Tr 204. Mr. Evans also testified that "in this particular instance, he was comfortable with testifying that the meter test results showed the meters were accurate." 6 Tr 391.

Regarding two meters that were not tested after removal, Mr. Evans testified that the two meters were not required to be tested after removal because they were removed due to retirement or obsolescence. *See*, 6 Tr 379-380.

When asked about the watt-meter testing requirements of Rule 607, Mr. Evans testified that:

> looking at [Rule 607], it doesn't . . . specify if it needs to be tested before and after. It is true that there is no data on meter ending . . . [in] 595 [installed prior to the Simmonses' 2009 purchase of the residence, and removed on July 24, 2013], but the other meter . . . ending in 908 did test at 99.956% accurate on July 3, 2013. So I mean I would say that, looking at this again for Meter No. 3064595, I guess there's not enough data to say conclusively that [Rule 607](1) was followed because there's not even any data on what the meter tested at prior to installation, but there was a test result prior to installation for the subsequent meter, 10108908.

6 Tr 379-380. He went on to say that:

> there's no data that was gathered at the end of the [908] meter's lifespan [installed on July 24, 2013, and removed on August 25, 2021] that I could say yes, it's definitely within the accuracy ranges.

6 Tr 381.[10]

IV. POST HEARING BRIEFS

A. Dwight and Sharon Simmons

In their post-hearing brief, filed on February 24, 2025, the Simmonses argued that Consumers failed to produce all documents requested in discovery; the company failed to explain why the

[10] Exhibit C-24, page 4, indicates that a "smart meter" was installed at the Simmonses' residence on July 24, 2013.

Simmonses' bills were so high; argued there were meter testing failures, meter data inconsistencies, and incomplete data; and meter testing data lacked signatures and critical data. They also questioned why actual data was not produced, among other issues. Simmonses' post-hearing brief, pp. 1-21 (pagination applied in natural order).

In conclusion, the Simmonses argued that:

> Consumers Energy's failure to produce ESI [electronically stored information] in its original format, its contradictory retention policy claims, and its production of error-ridden spreadsheets amount to discovery misconduct and spoliation of evidence. Consumers Energy's own billing records, regulatory violations, and discovery misconduct further support the complainant's claim. Accordingly, we respectfully request that this Court order corrective billing, impose penalties, and sanction Consumers Energy for its failure to comply with discovery rules.

Simmonses' post-hearing brief, p. 22.[11]

The Simmonses requested that: (1) Consumers be penalized for failing to produce complete and reliable discovery materials, (2) Consumers be ordered to conduct a full audit of its meter testing and billing procedures, (3) Consumers be required to improve its meter reading and billing transparency policies, and (4) the Complainants be reimbursed for overbilling per Rule 26(a). The Simmonses also requested that Consumers issue a public apology. *Id*., pp. 22-23.

B. Consumers Energy Company

In its post-hearing brief, Consumers argued that there is no evidence that the company violated rules or that an overbilling had occurred. *See*, Consumers' post-hearing brief, pp. 1-32. In particular, Consumers argued that, in and of themselves, any spikes in the Simmonses' energy bill were not indicative of incorrect meter readings or flaws in the meter. Consumers contended that "[t]o show that a spike is problematic, therefore, the Simmons would need to show that it flowed

[11] It is understood that the Simmonses' reference to "this Court" refers to the Commission.

from an incorrect meter reading or a flaw in the meter installed at the time. They have done neither." *Id*., p. 7.

In fact, Consumers asserted that it is the Simmonses' onus to show by a preponderance of the evidence that there was an incorrect meter reading or that their meters were flawed. *See*, *id*., p. 8. Furthermore, Consumers noted that all four meters measured consistently at the vacation home, with several of the meters testing as accurate. *See*, Consumers' post-hearing brief, pp. 7-8. Consumers asserted that the Simmonses "have not refuted the evidence showing that their energy use was driving both their consumption history and the home energy reports." *Id*., p. 10. Consumers stated that a "true breaker-by-breaker test would have allowed [it] to work collaboratively with the Simmons to 'understand what is causing the high usage'" but that the Simmonses instead conducted a test that was not a true breaker-by-breaker test. *Id*., p. 11 (citing 5 Tr 225). Finally, Consumers alleged that the Simmonses' high bills were due to their own usage, including the regular use of space heaters which is "consistent with what the Company's meter reads have shown and is consistent with the billing at the residence." Consumers' post-hearing brief, p. 28.

Consumers requested that the Commission find that the company did not violate any of the Commission's billing rules, Technical Standards, or "any other law when providing electric service to the Simmons[es]' residence." *Id*., p. 34.

C. The Commission Staff

The Staff, in its post-hearing brief, recounted the evidence of record, as well as the violations that Consumers was alleged to have committed, and argued that the Simmonses failed to meet their burden of proof that Consumers had violated any rules or had overbilled them for electric use. Staff's post-hearing brief, pp. 2-12. In closing, the Staff stated that:

> [t]his complaint revolves around the energy consumption of a residence owned by the Complainants. The Complainants state that [their] electric bills are higher than they think the size of the residence and the type of use the residence has – as a vacation house – warrants. Given the nature of the complaint, the accuracy of the meters at the residence is the key to whether there has been a billing error based on an erroneous recording of usage. The meters in question were tested by the vendors before shipment to the Respondent and except for the meters removed for obsolescence, the meters were tested upon removal and found to be within the parameters required under Commission rules. In addition, upon customer request[,] meters were tested at the residence and then upon removal and replacement and found to be accurate. With this evidence Staff concludes that there has not been a billing error based upon faulty meters. Therefore, Staff asserts that the complainant has not borne the burden of proof and recommends that the complaint be dismissed with prejudice.

Staff's post-hearing brief, pp. 12-13.

V. PROPOSAL FOR DECISION

A. Request for Public Apology

In their initial brief, the Simmonses requested a public apology from Consumers for the first time. *See*, Simmonses' initial brief, pp. 22-23. The ALJ found that the Simmonses' desired remedies must have been set forth in the complaint or amended complaint and, lacking any legal authority to support the request, the ALJ recommended that the request be denied. *See*, PFD, p. 84; *see also*, Rule 441(2)(f).

B. Consumers Energy Company's Compliance with Mich Admin Code, R 460.115(1)

The ALJ stated that:

> [b]ased on the information Consumers provided regarding Rule 15(1), including its excessive tolerance limits for expected usage together with its apparently minimal, if any, review of any flagged billings, this [ALJ] recommends that the Commission direct the customer assistance Staff to investigate Consumers' processes and procedures to comply with Rule 15(1), Mich Admin Code R 460.115(1).

PFD, p. 85.

C. Review of Consumers Energy Company's Metering and Billing Practices

The ALJ recommended that the Commission deny the Simmonses' request that Consumers be ordered to conduct a full audit of its billing, meter reading, and meter testing because the record does not contain evidence that there is a system-wide problem. *See*, PFD, p. 84. The ALJ further noted that the Simmonses did not request this remedy in their complaint. *Id*.

D. Meter Accuracy, Reporting Requirements, and Credit Refund

The ALJ found that the Simmonses had been overcharged for electricity due to a grounding error relating to the meter at their property and recommended that Consumers be ordered to repay the Simmonses for one year of overcharges, including 5% interest. *See*, PFD, p. 79. Notably, the ALJ only allowed 12 months of overcharge due to "Rule 15(4) which limits refunds for a meter error to the '12-month period immediately preceding discovery of the error.'" PFD, p. 81 (quoting Rule 15(4)). Thus, the ALJ calculated the overcharge to be $1,933.92, which was increased to $2,030.62 when the 5% interest was included. *See*, PFD, p. 83.

VI. EXCEPTIONS AND REPLIES TO EXCEPTIONS

A. Dwight and Sharon Simmonses' Exceptions

1. Consumers Energy Company Should be Sanctioned

The Simmonses assert that the ALJ erred in not sanctioning Consumers as the ALJ found that, in "'withholding relevant information properly requested in discovery,'" Consumers acted in bad faith and was dismissive of their rights as customers. Simmonses' exceptions, pp. 1-2 (citing PFD, pp. 37-38).[12] The Simmonses opine that despite the ALJ's assertion that Consumers acted

[12] The Simmonses' exceptions were not paginated; therefore, pages are referred to in natural order beginning with the first page of the exceptions.

inappropriately, “no sanctions were imposed. No order for production. No consequence for years of obstruction.” Simmonses’ exceptions, p. 2. As such, the Simmonses ask that the Commission impose sanctions and a finding of adverse inference against Consumers, order Consumers to produce the Simmonses’ grounding reports and pre-2017 usage records, and apply greater restitution against Consumers.

2. Timeline for Restitution was Improperly Limited

The Simmonses believe that Consumers erred by not testing two of their meters after they were removed, violating Rule 604. The Simmonses acknowledge that Consumers claimed a waiver, but assert that in May of 2024, the Commission fined Consumers $1 million “for failing to disclose widespread meter malfunctions and for estimating bills without accurate readings.” Simmonses’ exceptions, p. 3. The Simmonses assert that Rule 15a reads such that “remedial billing could extend back six years or more” as it “permits a correction window based on **half the time since installation or last test**.” *Id*. (emphasis in original). As such, the Simmonses request that their bills be corrected beyond 12 months, that Consumers be found to have violated “Rule 2351 [sic] and misusing the AMI waiver[,]” and that the Commission “[g]rant full usage recalibration based on occupancy and efficient appliance upgrades.” Simmonses’ exceptions, p. 3.

3. Utility Negligence Versus Meter Error

The Simmonses point to the ALJ’s finding that a grounding error “‘[c]aused the Simmons’ [sic] meters to pull more electricity than the Simmons [sic] actually used at the Property.’” Simmonses’ exceptions, p. 4 (citing unknown source). The Simmonses pointed to a Consumers contractor, Belasco Electric (Belasco), and Belasco’s report which said that “‘[t]he grounding issue is ‘isolated to this specific property’ . . . and ‘the grounding system itself might be contributing to the abnormal current flow on the neutral wire.’” *Id*. (quoting Exhibit C-19, p. 33).

The Simmonses opined that the “ALJ acknowledged the fault was on our property yet framed the overcharge as an excluded ‘meter error’ under Rule 2(e). This semantic sleight-of-hand allows the utility to escape restitution for a defect its own technician and contractor diagnosed.” Simmonses’ exceptions, p. 4. As such, the Simmonses ask the Commission to: (1) recognize the grounding defect to be on Consumers’ side of the infrastructure; (2) apply Rule 26a(2) and (3); and (3) award them compensation for all of the affected billing years.

4. Grounding Error

The Simmonses contend that while the ALJ correctly found that they were charged for more electricity than they used, the ALJ mischaracterized their grounding issue as a meter error. To bolster their exception, they argue that they presented high usage and billing complaints back to 2013; the grounding issue was found in 2024; the meter test for meter no. 62129543 stated that there was a ground/bad neutral that was not on their side; and that on January 19, 2024, Consumers communicated that Breaker No. 6 was not grounded, thus pulling extra energy which was the reason for the higher usage.

The Simmonses also contend that Consumers failed to provide a technical grounding report, relying on Belasco’s March 6, 2024 report, stating that Belasco checked nearby houses and found that the grounding issue was isolated to the Simmonses’ property. The Simmonses also allege that despite the grounding issue being diagnosed in 2024, the issue had been “ongoing” and was why their usage was higher “‘the entire time.’” Simmons’ exceptions, p. 5 (citing unknown source).

The Simmonses request that the Commission recognize the grounding defect as an ongoing issue, adjust their bill from 2013 through 2024, and compensate them for budget plan overpayments based on their faulty meter data.

5. Misregistered Use Versus Meter Error

The Simmonses assert that the ALJ inaccurately determined that their claim was a meter error instead of "misregistered usage." Simmonses' exceptions, pp. 5-6. The Simmonses contend that their bills may have been high because there was a mistake in reading their meter or having a faulty meter. *See*, *id*., p. 6. As such, the Simmonses believe that the definition of "incorrect actual meter readings" applies under Rule 2(e)(i), whereas "[t]he exclusion for 'meter error'" does not apply. *Id*. Thus, the Simmonses request that the Commission reclassify their meter readings as "functional billing errors"; apply Rule 26a to provide them a refund; and "[r]eject the narrow reading that benefits the utility at customer expense." *Id*.

6. Faulty Meter Overcharge is Billing Error

The Simmonses also assert that a faulty meter overcharge is, in fact, a billing error, and that the ALJ erroneously found otherwise. *See*, *id*. The Simmonses argue that if their meter was registering inaccurately caused by a defect on Consumers' side, then it is, in fact, an incorrect meter reading. *Id*. As such, the Simmonses request that the Commission apply Rule 26a "to include utility-included overcharges[,]" compensate them for budget plan overpayments from 2013 through 2024, and enforce Consumers' refund obligations.

7. Failure to Preserve Evidence

The Simmonses except to Consumers' production of screenshots, stating that they were unable to analyze Consumers' screenshots due to a lack of context and unexplained flags. *Id*., p. 7. The Simmonses also contend that Exhibit C-25 refers to their primary residence instead of their vacation home in Muskegon which is the subject of their complaint. As such, the Simmonses request that the Commission use Rule 15 to impose sanctions on Consumers; order an independent audit of the utility's "data retention, EMMA flags, and outage classifications[;]" and grant them a usage recalibration from 2013 to 2024. *Id*.

8. Consumers Energy Company's Evidence is Inconsistent

The Simmonses claim that Consumers violated Rule 51 via the company's "inconsistent justifications for meter removal." *Id*., pp. 7-8. Furthermore, the Simmonses claim that the ALJ improperly found that Consumers was under no obligation, via the waiver found in Rule 604, to test their meter after it was removed. As such, the Simmonses request that the Commission find Consumers' waiver justification to be invalid, determine that Consumers violated Rule 604 by removing their meter without testing it, apply an adverse inference against Consumers that the Simmonses' meter failure "may have contributed to years of overbilling and distorted usage readings[,]" and expand the restitution granted by the ALJ as well as regulatory review of Consumers. *Id*., pp. 8-9.

9. Rule Violations Related to Meter Testing

The Simmonses believe that Rule 613a was violated due to incomplete meter testing as Consumers' meter test forms were not signed by the individuals who performed the tests. The Simmonses also assert that the absence of signatures violates MRE 903, "which demands authentication as a condition for admissibility." *Id*., p. 9. Because Rule 613a(2)(d) states that meters must be "'inspected for mechanical and electrical faults when the accuracy of the device is checked[,]'" they also believe that "test forms that failed to record or confirm electrical fault inspections—including grounding status" means that Consumers did not fulfill the required conditions for meter accuracy testing. *Id*. (quoting Rule 613a(2)(d)). The Simmonses allege that Consumers' failure to record its inspections "has direct and material impact on Complainants' ability to establish how long the grounding defect persisted and how much it distorted electricity usage recordings." Simmonses' exceptions, p. 9. Lastly, the Simmonses contend that Rule 51 was violated by Consumers when the utility removed their meters without properly testing them. As such, the Simmonses request that the Commission find that Consumers violated Rules 51 and 613a(2)(d); that Consumers violated MRE 903; that Exhibits C-3, C-4, C-6, and C-7 be rejected; that an adverse inference be held against Consumers for the meters that went untested as the meters "may have contained undiagnosed grounding defects or stray current vulnerabilities[;]" and that they be granted more restitution "to reflect the uncertainty caused by improper testing and failed documentation." *Id*., pp. 9-10.

10. Consumers Energy Company's Obstruction and Data Manipulation

The Simmonses assert that the ALJ did not "fully account for the scope and materiality of Consumers Energy's obstruction during discovery, the inconsistencies in its documentation, and its repeated failure to produce accurate and complete records." *Id*., p. 10. The Simmonses contend that there were inaccurate and incomplete critical documents (such as testing certifications lacking signatures), and that Consumers behaved in a "willfully evasive" manner throughout discovery. *Id*. However, the Simmonses take most umbrage in their allegation that Consumers did not disclose "the existence and implications of a grounding issue discovered in January 2024 during a customer-requested meter check." *Id*. The Simmonses assert that Consumers' counsel "falsely claimed" that their grounding issue was traced to another residence despite a March 1, 2024 report from Belasco that confirmed nearby houses "**were checked and none of them lost their neutral.**" *Id*., pp. 10-11 (emphasis in original). The Simmonses argued that the ALJ dismissed such concerns while ignoring Consumers' bad faith actions in discovery. As such, the Simmonses request that the Commission apply an adverse inference against Consumers regarding missing documentation; penalize the utility for entering the Simmonses' property and withholding its findings; and expand the Simmonses' restitution from 2013-2024.

11. Consumers Energy Company's Violation of Mich Admin Code, R 460.150

The Simmonses believe that the ALJ was wrong to dismiss their allegation that Consumers violated Rule 50. To bolster their claim, they highlight that from 2013 until present, they called and "'expected Consumers Energy to come and investigate the issue . . ." but assert that it "never happened." *Id*., p. 11 (citing PFD, p. 10). In fact, the Simmonses argued, they did not know they could request meter testing as "Consumers never offered it as an option." Simmonses' exceptions, p. 11. Furthermore, the Simmonses argue, Consumers' complaint procedures are hard to locate on its website. *See*, *id*., p. 12. The Simmonses believe that the ALJ erred in finding that Consumers conducted its meter tests in response to the Simmonses' complaints. As such, the Simmonses ask that the Commission find that Consumers violated Rule 50, that Consumers be ordered to disclose all of the Simmonses' complaint records and internal alerts from 2013-2024, and that sanctions are imposed on Consumers "for procedural noncompliance and expand restitution accordingly." *Id*.

12. Consumers Energy Company's Failure to Properly Investigate Grounding Issue

The Simmonses also except to Consumers investigating their grounding issue only "after **persistent pro se efforts**" and then withholding the results. *Id*. (emphasis in original). The Simmonses assert that Consumers' technician was incorrect when, in January of 2024, a utility-side grounding defect involving breaker no. 6 was "disproven by Belasco." Simmonses' exceptions, p. 12. The Simmonses also argue that Consumers refused to do "any real investigation until October 2024, tried to shift blame to another residence, performed unannounced site visits, and repeatedly refused to disclose their findings" such that Consumers engaged in "not mere negligence" but an effort to "withhold results that would expose liability." *Id*., pp. 12-13. As such, the Simmonses request that the Commission apply an adverse inference against Consumers regarding “a persistent utility-side defect[,]” expand their restitution “to include all documented high-usage alerts and budget plan overpayments[,]” order that Consumers fully disclose all site visit records and technical conclusions that the utility withheld regarding the Muskegon property, and reaffirm that suppressing material evidence “is itself grounds for Commission discipline.” *Id.*, p. 13.

13. Summary of Dwight and Sharon Simmonses’ Requested Relief

In conclusion, the Simmonses requested the following relief from the Commission:

1. **Reject the ALJ’s Proposal for Decision** to the extent it limits restitution to 2024 and fails to impose sanctions for evidentiary suppression.
2. **Reclassify the grounding-induced overcharges** as billing errors under Rule 2(e), triggering restitution protections in Rule 126a.
3. **Apply full recalculation and refund for electricity billed between 2013 and 2024**, adjusted for actual expected usage based on periods of vacancy, similar homes and documented upgrades.
4. **Award a refund of all budget plan overpayments** from 2013 to 2024, including applicable interest or credits.
5. **Impose sanctions or fines on Consumers Energy** for procedural misconduct, removal of untested equipment, and obstruction through discovery.
6. **Compel full disclosure of all grounding reports, field visit records, and internal usage formulas** that were requested but withheld.
7. **Direct an independent audit of Consumers’ Rule 15 usage validation procedures**, EMMA alert handling, and residential complaint processing.
8. **Apply [an] adverse inference to all missing or suppressed evidence**, particularly as it related to meter type, data history, and grounding diagnostics.
9. **Initiate Commission-level review of Consumers’ waiver conduct**, AMI transition oversight, and misapplication of meter error exclusions.
10. **Acknowledge Consumers Energy’s refusal to offer a public apology** and issue a formal Commission finding that the company’s conduct towards its customer was unjust, evasive, and dismissive of statutory rights.

Id., pp. 13-14 (emphasis in original).

B. Consumers Energy Company's Exceptions

1. Discovery

In its exceptions, Consumers contends that it produced voluminous information in its discovery response in a timely manner and in such a way that it produced all requested information. *See*, Consumers' exceptions, pp. 5-11.

i. The Administrative Law Judge Erred in Concluding that Failure to Produce Old Consumption Data was Deliberate

Consumers asserts that it did not deliberately withhold evidence to bolster its arguments. Consumers' exceptions, p. 12. As such, Consumers asserts that "the ALJ went far too far in finding the 'deliberate withholding of inherently relevant information'" and that the company was "'dismissive.'" *Id*. (citing PFD, p. 37).

Consumers states that it would have been "poor litigation strategy to deliberately withhold information in litigation that helps the responding party's case . . . so there is no reason to assume it was withheld in bad faith against the Company's own interest." *Id*., pp. 12-13. Consumers also states it "did not produce old consumption data that was not itemized and lacked the detail needed for the Simmons [sic] to compare their energy use with amounts billed for the use." *Id*., p. 12.

Furthermore, Consumers asserts that the Simmonses were responsible for documents produced within the scope of their discovery, stating that the Simmonses "'should not have expected to receive what they did not ask for.'" *Id*., p. 13 (quoting Consumers' updated trial brief, p. 4). Consumers further contends that it should not have an adverse inference drawn against it for failure to produce evidence because it has shown "it has a reasonable explanation." Consumers' exceptions, p. 13.

ii. The Administrative Law Judge Erred, Rejecting Consumers Energy Company's Objection to Discovery Requesting Over 10 Years of Data

Consumers highlights Rule 15(4) in its exceptions which states that "refunds and credits are limited to a one-year window for meter errors," while mentioning Rule 26a(1) which limits billing error refunds and credits to a three-year window. *Id*., p. 14. As such, Consumers asserts, "[i]nformation outside of the one-year window in the Commission's rules is irrelevant to the proceeding" as the information requested was outside of the look-back window and "should not have been discoverable" per MRE 401 and MCR 2.302(B)(1), which state that relevant evidence must be "'of consequence in determining the action'" and that discovery is limited "to relevant evidence." *Id*. As Consumers argues, "whether the Simmons[es]' bills were unusually high from 2013 through 2018 does not determine whether they were unusually high during the look-back period." *Id*., p. 15. Consumers also highlights that the Commission's own rules state that customer records must be retained for no more than six years per Rule 15a, and, as the Simmonses noted, "the Company has provided the information requested going back six years." *Id*.

Consumers also notes that discovery closed in September of 2024, yet the Simmonses never filed a motion to compel. *See, id*., p. 16. The ALJ ruled that pre-2018 data was relevant, thus "open[ing] this door" for the company to use such data for its defense. *Id*., pp. 15-16. In short, Consumers contends that its due process rights were interfered with when the ALJ gave the Simmonses procedural leeway by requiring Consumers to provide documentation that was not requested in discovery. Furthermore, Consumers contends that it "was under no obligation to produce the consumption information until the ALJ ruled on the objection" such that the objection is now ripe for review and that if the Commission agrees, then Exhibit C-13 is still admissible, but all pre-2018 evidence should be disregarded. Consumers' exceptions, p. 16.

iii. Adverse Inference is Not Warranted

Consumers excepts to the Simmonses' request for a finding of adverse inference against it because an adverse inference may only be found when a party has failed to produce evidence that is material, in the party's control and could have been produced, with the party lacking a reasonable excuse for failure to produce the evidence. *Id*., p. 17. Consumers asserts that it had a reasonable explanation for not initially providing old consumption data but that, regardless, it did ultimately provide the data.

2. Meter Error

Consumers notes that the ALJ found that there was evidence that the Simmonses were charged for more electricity than they actually used; however, the ALJ did not hold the Simmonses to their burden of proof by a preponderance of the evidence in their role as the complainants in this matter. *See*, *id*., pp. 17-18.

i. Dwight and Sharon Simmonses' Energy Spikes are Not Evidence of Meter Reading Errors or Flaws

Consumers contends that spikes in energy use alone is not evidence of an incorrect meter reading or meter flaw. *Id*., p. 18. Consumers also reminds the Commission that it is the Simmonses' burden of proof to show "that there was an incorrect meter reading or that the meters were flawed." *Id*.

Consumers also notes that the Simmonses' meter readings "were consistent across all meters." *Id*., p. 19 (citing 5 Tr 222; Exhibit C-12, p. 2; Exhibit C-13). This bolsters Consumers' argument that meters nos. 3064595 and 10108908 did not need to be tested after they were removed as "they were obsolete and exempted from testing under Rule 604." Consumers' exceptions, p. 19 (citing 5 Tr 516, 208-209; Rule 604). Furthermore, Consumers postulates that as some of the Simmonses' meters had been tested as being accurate, "the untested meters with consistent readings must also have been accurate." Consumers' exceptions, p. 19. Consumers points to its witness, Ms. Miller, who testified that while an issue was found on the Simmonses' neutral, it "could indicate an issue on the distribution system or issue at another residence" and has since been found to have had no impact on the energy use recorded on the Simmonses' meter. *Id*. (citing 5 Tr 249). In fact, the grounding issue "was traced to another residence" which would not impact the Simmonses' usage; and even if the grounding issue was on the Simmonses' side, the Simmonses would not allow Consumers to perform tests inside their home. Consumers' exceptions, p. 21 (quoting 5 Tr 227, 249; Exhibit C-14). Consumers concludes by noting that the Simmonses "did not refute the evidence showing that their energy use was driving both their consumption history and the home energy reports." Consumers' exceptions, p. 20.

ii. No Incorrect Meter Readings Shown by a Preponderance of the Evidence

In exceptions, Consumers notes that the Simmonses provided inconsistent information on heating and appliance use in their home and there was "no independent evidence" of their electric usage. *See, id*., p. 21. Consumers asserts that a "true breaker-by-breaker test would have allowed the Company to work collaboratively" with the Simmonses to "'understand what is causing the high usage'" but that the Simmonses refused, instead moving forward with a test that was not a true breaker-by-breaker test without Consumers' knowledge or participation. *Id*., p. 22 (citing 5 Tr 119-120, 225). Consumers asserts that it "cannot determine with certainty what use is driving the high consumption" without the Simmonses agreeing to a true breaker-by-breaker test. Consumers' exceptions, p. 22.

Regarding the Simmonses' usage, Consumers believes that the Simmonses' claims of "using two space heaters daily for 24 hours is consistent with what the Company's meter reads have shown and is consistent with billing at the residence." *Id*., p. 23. Furthermore, the usage reads at the Simmonses' residence "were consistent with the voltage recorder readings taken between March 1 and March 8, 2024 at the residence." *Id*. (citing 5 Tr 220; Exhibit C-12, p. 2). As such, Consumers asserts that there have been stable, predictable usage patterns at the Simmonses' residence as measured by several different meters. To resolve this matter, Consumers states that it will concede to a $2,030.62 credit as calculated by the ALJ "if it is accompanied by conditions preventing the Simmons[es] from filing further complaints" if the Commission cannot force a breaker-by-breaker test at the Simmonses' residence. Consumers' exceptions, p. 24.

iii. Incorrect Meter Readings or Flaws not Shown by a Preponderance of the Evidence

In exceptions, Consumers contends that the Simmonses' bills and budget plan amounts over the past six years do not show that there was an incorrect remote meter reading. *See, id.,* p. 25. Consumers also addresses the Simmonses' claim that because meter no. 10108908 stopped transmitting shortly before it was replaced, it must have been improperly recording their energy use. Consumers asserts that an "actual meter read was taken from this meter – and used to adjust an estimated read – after it stopped transmitting." *Id*., pp. 25-26 (citing Exhibit C-20). As such, Consumers argues that per Rule 446, the Simmonses have not met their burden of proof, nor have they "pointed to any evidence that there were incorrect remote meter readings or flaws in any of their meters." Consumers' exceptions, p. 26.

iv. The Administrative Law Judge Erred in Concluding a Meter Error Caused the Simmonses' High Energy Use

In exceptions, Consumers highlights that the ALJ did not mention the Simmonses' analysis despite them having the burden of proof as complainants. In fact, Consumers avers, both the utility and the Simmonses acknowledge that "[p]eriods of high energy usage are directly correlated with high end balances" and as such, increased energy consumption was responsible for the Simmonses' high balances. *Id*. Consumers also noted that the Staff found that the Simmonses' budget plan "'was working as intended and that any irregularity – changing amounts – in a budget plan *may* reflect changing electrical consumption, which changing usage *may* be driven by different appliances in use and changing weather patterns.'" *Id*., pp. 26-27 (quoting Staff's initial brief, p. 7) (emphasis in original).

Consumers also asserts that the ALJ erred in concluding that space heaters are akin to other appliances since "electric space heaters are one of the most, if not the most, inefficient heating sources" where the Simmonses' use of such "certainly did not help" their increased energy usage. Consumers' exceptions, p. 27. Additionally, Consumers highlights the Simmonses' inconsistent statements regarding their energy use along with their statement that they heated their home to 68 or 74 degrees "using electric baseboard heaters or space heaters[,]" which "would lead to higher-than-average electricity consumption during the winter months." *Id*., pp. 27-28 (referencing Exhibit C-13).

3. Alleged Grounding Issue

Consumers avers that the ALJ erred by not evaluating the Simmonses' arguments and evidence to consider whether they met their burden of proof, instead of focusing on Consumers' own evidence "to undermine the Company's case." Consumers' exceptions, p. 28. Consumers highlights the Simmonses' "sole argument . . . attempting to tie the grounding issue to their high energy use" while noting that the company was unable to "validate or invalidate whether there was a grounding issue on the Simmons' [sic] side of the meter [due to their refusal to allow Consumers to perform a true breaker-by-breaker test], which would have been the Simmons' [sic] responsibility." *Id*.

Consumers alleges that the ALJ erred further by disagreeing with Consumers' witness, Ms. Miller, who testified that a grounding issue on the company's side would not impact a customer's energy usage despite there being no contradictory expert testimony. *Id*., pp. 28-29. Instead, the ALJ put stock in a letter from Belasco, which "was hardly definitive" as Belasco stated that the grounding issue "'*might* be contributing to the abnormal current flow on the neutral wire.'" *Id*., p. 29 (citing Exhibit C-19, p. 33) (emphasis in original). Consumers concludes by stating that the Simmonses' did not meet their burden of proof and that "the ALJ's criticism of the Company's evidence falls apart under close scrutiny." Consumers' exceptions, p. 29.

4. Meter Testing

Consumers criticizes the ALJ's critique of its and the Staff's testimony regarding Consumers' meter testing "without discussing the Simmons' [sic] arguments[,]" while alleging that the ALJ also erred in his decisions "about Rule 607 from the Company's testing." *Id*., p. 30. In its argument against the ALJ's positions, Consumers reminds the Commission that the company has tested the meters several times—noting that there have been four meters since the Simmonses took possession of the residence and that the meter manufacturer also tested the meters before installation. *Id*. Consumers lists its Exhibits C-1 through C-7 which show various meter tests, all functioning within acceptable operating parameters. Thus, Consumer contends, as the meters were "proven to be accurate, there was no need to consider non-meter evidence of the Simmons's [sic] energy use." *Id*., p. 31.

5. Alleged Rule Violations

Consumers denies that it has violated any of the rules discussed below.

i. Mich Admin Code, R 460.102a(1), R 460.115, and R 460.3607(1)(a)

Consumers notes that the ALJ found that it violated Rule 2a(1) and Rule 607(1)(a), thus entitling the Simmonses to a refund credit under Rule 15. However, Consumer contends, "the evidence does not support the ALJ's conclusion that a grounding problem caused the Simmons'

[sic] high bills." Consumers' exceptions, p. 31. Consumers contends that without such evidence, "it would be a coincidence of the most improbable probabilities that all four of the meters at the Simmons' [sic] residence inaccurately recorded the Simmons' [sic] energy use." *Id*. Per the definition of "meter error" in Rule 2a(1), Consumers contends that the Simmonses failed to present evidence of a meter error being responsible for their high balance as the ALJ himself "pointed to the Company's January 12, 2024 meter test, which showed 'both a test of meter accuracy of 100% and a problematic grounding issue.'" *Id*., p. 32 (quoting PFD, p. 56). However, Consumers reasserts, the grounding issue would not impact the meters' readings.

Consumers also asserts that the ALJ was not specific in the PFD regarding Rule 15(1), merely discussing credit refunds in other sections of Rule 15. Consumers argues that "it was denied a meaningful opportunity for discovery related to [Rule] 15(1), which would require specific factual allegations that the Company could have explored in discovery to properly defend itself." Consumers' exceptions, p. 32. As there was no factual allegation that Consumers violated Rule 15(1) before the close of discovery and before the PFD was issued, Consumers would be denied "meaningful discovery" should a violation of Rule 15(1) now be found. *Id*., p. 33.

Consumers identifies Rule 607 as one that includes accuracy thresholds, while Rule 604 provides that meters "'shall be tested after they are removed from service unless they are retired because of obsolescence.'" *Id*., p. 34 (citing Rules 604 and 607). Consumers points to the Staff's arguments that Consumers complied with Rules 604 and 607 because the meters that were tested were accurate and those removed for obsolescence or via waiver were not required to be tested. *See*, *id*. (citing 5 Tr 202-203). Furthermore, Consumers avers that the Simmonses did not address Rules 604 or 607 in any of their pleadings. At the hearing, the Staff's witness, Mr. Evans, testified that Consumers did not violate either rule given the circumstances surrounding the installation and removal of the Simmonses' meters. *See*, Consumers' exceptions, p. 34 (citing 6 Tr 380-381). Furthermore, Consumers contends that reading the Commission's Technical Standards as a whole, "the standards do not require constant testing of meters. Instead, the rules focus on meters being tested before placement and after removal." Consumers' exceptions, p. 35. Thus, "Rule 607 does not require constant testing of meters." *Id*. In fact, "reading Rule 607 without the context of Rule 604 ["which provides a clear standard: meters must be tested when removed unless they are retired due to obsolescence"] would render the obsolescence exclusion in Rule 604 meaningless." *Id*. (quoting Rule 604).

Looking specifically at the Simmonses' meters, Consumers states that their meters "were either obsolete or waived for testing and thus not tested." *Id*., p. 36. Additionally, the Simmonses did not allege a violation of either Rule 604 or Rule 607. Thus, Consumers asserts that the Commission should find that the utility did not violate Rules 15, 604, or 607.

ii. MCR 2.118(C)(1)

In its exceptions, Consumers highlights that the ALJ "cited MCR 2.118(C)(1) to defend the *sua sponte* inclusion of new allegations in the case" but that the ALJ "does not cite MCR 2.118(C)(1) in full." *Id*., p. 37. Consumers then provides the full text of the rule which outlines that when an issue is newly raised by the evidence, the pleadings must be amended "'to conform to the evidence and to raise those issues [by a] motion of a party at any time, even after judgment.'" *Id*. (quoting MCR 2.118(C)(1)). However, "'defense of a new claim obviously will require additional rounds of discovery . . . . All this necessarily takes time.'" Consumers' exceptions, pp. 37-38 (quoting *Weymers v Khera*, 454 Mich 639, 661; 563 NW2d 647 (1997) (internal citation omitted)). Consumers believes that MCR 2.118 creates three issues in this matter: (1) a motion to amend the pleadings is required, (2) there is no evidence on the record to support a violation of the rules above, and (3) Consumers "has explicitly rejected the inclusion of rules 607 and 15 as defined by [Rule] 2a(1) as applied to this case." Consumers' exceptions, p. 38. As Consumers has explicitly rejected the inclusion of Rules 607 and 15, it "cannot be thought to have expressly or implicitly consented" to them and that is why a motion to amend the pleadings—which the Simmonses did not file—is required. *Id*. In short, Consumers argues, it cannot be found to have violated rules that it was never alleged to have violated as to do such "without an amendment creates a due process concern." *Id*., pp. 38-39.

iii. Mich Admin Rule, R 460.3601(3)

In its exceptions, Consumers quotes Rule 601(3):

> A report of the results of the test must be made to the customer within a reasonable time after the completion of the test, and a record of the report, together with the complete record of each test, must be kept on file at the office of the electric utility or cooperative.

Consumers' exceptions, p. 40.

Consumers asserts that there is no ambiguity in the rule and administrative rules such as Rule 601(3) do not permit judicial interpretation when "'the agency's rule is clear and unambiguous . . . .'" *Id*., p. 41 (quoting *Jordan v Jarvis*, 200 Mich App 445, 451; 505 NW2d 279 (1993)). Consumers states that it has complied with Rule 601(3) by its verbal report of results to the Simmonses, which they acknowledged receiving, and which the Staff agreed satisfied Rule 601(3). However, the ALJ contended that there was an implicit requirement that the test results be in writing. *See*, Consumers' exceptions, p. 41 (citing PFD, p. 61). Furthermore, Consumers argues, "[o]ther rules in the same rule set makes [sic] it clear that reports can be written or oral" such as Mich Admin Code, R 460.3205 (Rule 205) which allows a utility to make a "'written or oral annual report'" to the Staff. Consumers' exceptions, p. 42 (quoting Rule 205). Consumers argues that if there was a preference, it would have been spelled out in Rule 601(3), and based on the plain interpretation of the rule, it did not violate Rule 601(3) with its verbal report to the Simmonses.

iv. Mich Admin Code, R 460.121

Consumers again excepts to the ALJ reading an implicit requirement, this time into Rule 21. *See*, Consumers' exceptions, pp. 42-43. Rule 21 provides the requirements for an equal monthly billing program, such that if the customer has a balance of more than $10.00 at the end of the program year, the utility shall return the balance or put the credit towards the next month's bill, upon the customer's request; likewise, if the balance is less than $10.00, the utility will provide a credit to the customer's account. *See*, Rule 21. Consumers contends that this rule speaks for itself and "contains no requirement for the utility to inform customers of their options." Consumers' exceptions, p. 43.

Consumers opines that while the ALJ acknowledged that a customer may make a request based on its preference, he also read into the rule language an implicit requirement that utilities "must inform customers" of their options. *Id*. Consumers argues that the ALJ's "reading goes beyond a plain reading of the rule and adds a requirement that does not exist." *Id*., (citing PFD, p. 64). Consumers argues that the ALJ's finding "violates principles of statutory interpretation" and that "Rule 21 is also clear and the ALJ cannot read new requirements into a rule." *Id*. Furthermore, Consumers argues, the ALJ's new obligation is one which he seeks to apply retroactively; to resolve this issue, the company states it "is willing to do more to inform customers of their option to request a refund . . . going forward." *Id*., p. 44.

6. Alleged Failure of Complainants to Pursue Testing to Identify an Electric Problem

While the ALJ found that the Simmonses' refusal to participate in a breaker-by-breaker test was irrelevant, Consumers argues that their refusal prevented the company "from identifying the precise heating and cooling systems or appliances responsible for the Simmons' [sic] energy consumption." *Id*. Consumers explains that a "true breaker-by-breaker test does not just test the operation of the breaker panel itself; rather, by progressively testing each circuit feeding the breaker panel, it allows the utility, electrician, and customer to partner and understand what appliances are running, how much energy is being used, and how it is being recorded on the meter." *Id*., p. 45. Consumers argues that while the Simmonses expressed safety concerns which led them to have AMP Electric perform a test, such was not a true breaker-by-breaker test, nor was Consumers informed of such test so that it could participate. Consumers explained that the AMP Electric test, not being a breaker-by-breaker test, did not facilitate Consumers working with the Simmonses "to understand what is causing the high usage as stated in the complaint." *Id*. (citing 5 Tr 225). Consumers opines that the Simmonses incorrectly believe a breaker-by-breaker test merely "inspects both the inside and outside electrical panels." Consumers' exceptions, p. 45-46 (citing Exhibit C-18). Furthermore, Consumers argues, the Simmonses ignored the definition of a breaker-by-breaker test when Consumers requested discovery from them. *See*, Consumers' exceptions, p. 46. The company avers that if the Simmonses had allowed Consumers to perform an actual breaker-by-breaker test, they could have "together identified the root source of the energy consumption, considered alternatives to the cause, and resolved this complaint." *Id*.

Consumers also highlights information about the Simmonses' electrical usage that was brought out during the hearing. At the hearing, Consumers learned that the Simmonses began using space heaters in 2023, but still use space heaters in addition to baseboard heaters. *See*, *id*., p. 47 (citing 5 Tr 171-172). Additionally, at the hearing, Consumers learned that the Simmonses sometimes use air conditioning. Consumers' exceptions, p. 48 (citing 5 Tr 131). Furthermore, on December 13, 2022, Mr. Simmons told Consumers that he heats his residence to 64 degrees.

Consumers' exceptions, p. 49 (citing Exhibit C-16; 5 Tr 130, 278). However, Mr. Simmons refused to engage in electricity-saving suggestions that Consumers made such as "winterizing the home, draining the water lines, and turning off electric service to save money" in addition to turning the heat down to 50-55 degrees "to save money while keeping the pipes from freezing." Consumers' exceptions, p. 49 (citing Exhibit C-16; 5 Tr 279). As such, Consumers contends that given the Simmonses' discovery responses, it is clear that they did not follow Consumers' advice and as such, their electrical usage is consistent with their consumption.

7. A Credit Refund is Not Appropriate

While Consumers does not take umbrage with the ALJ's credit refund amount itself, the company asserts that it "should not be required to credit the Simmons [sic] a refund for their complaint." Consumers' exceptions, p. 50.

8. Continued Compliance with Mich Admin Code, R 460.115

Consumers argues that Rule 15(1) was not within "the scope of the [Simmonses'] complaint" nor was it raised properly *sue sponte* by the ALJ; however, it "recognizes it has an obligation to follow this Rule and believes it is doing so." *Id*., p. 51. As such, Consumers agrees with the ALJ's recommendation for the Staff to review the utility's Rule 15(1) processes and procedures.

9. Summary of Consumers Energy Company's Requests

Consumers ends its exceptions by noting that while it disagrees with the ALJ's findings that it violated various Commission rules, the Simmonses "have raised roadblocks" and their high energy bills logically follow from their high energy use. *Id*. Thus, Consumers requests that the Commission dismiss the complaint with prejudice.

C. The Commission Staff's Exceptions

1. Meter Accuracy

The Staff excepts to the ALJ's finding that the Simmonses were overcharged for power due to a faulty or inaccurate meter and to his finding "that a meter that tests accurately may have grounding issues affecting the amount of electricity used [or that] two of the meters were not tested after removal so that a meter that was accurate when installed could become [in]accurate over time making the assertion the meter was accurate unsupported." Staff's exceptions, pp. 1-2 (citing PFD, pp. 56-57) (internal citations omitted). The Staff points out that the ALJ found the Staff's focus on meter accuracy "problematic" and that he noted that a meter that tests accurately could have a grounding issue that affects the amount of electricity used. Staff's exceptions, p. 1. The Staff argues that "[t]here is no evidence that the meters at the Simmons[es]' residence were faulty or inaccurate." *Id*. The Staff states that the meters are tested for accuracy by the manufacturer before being sent to Consumers and that Consumers batch tests the meters for accuracy when received. *Id*., p. 2 (citing 6 Tr 429, 450). The Staff points out that the two meters that were not tested upon removal were not required to be tested at removal, no. 30790065 was tested, and no. 62129543 was also field tested and remains installed at the residence. Staff's exceptions, p. 2 (citing Staff's initial brief, p. 10). The Staff argues that the meter testing by Consumers and the manufacturer prior to installation and the testing upon removal "demonstrates that the meters complied with the Commission's rules for meter accuracy." Staff's exceptions, p. 2. The Staff argues that the ALJ's suggestion that the untested meters could have become inaccurate over time is without evidentiary support and thus, fails to meet the evidentiary standard that the meters were faulty or inaccurate, whereas all record evidence points to the accuracy of the meters. *See*, *id*.

2. Alleged Overbilling

Concerning Consumers' alleged overbilling, the Staff points out the ALJ made extensive references to how Consumers calculates electric use for appliances and Consumers' lack of explanation of why the Simmonses' electric use was higher than their neighbors before concluding that they were overbilled. *See*, Staff's exceptions, p. 3 (citing PFD, pp. 38-39, 41, 43-50). The Staff argues that the meters measure electricity flowing into the residence which is used to bill the customer, that the evidence supports that the meters were accurate, and that no evidence establishes that the meters were inaccurate. *See*, Staff's exceptions, p. 3. The Staff declares that:

> [s]tating that a meter that was not tested after removal may have become inaccurate before it was removed is not evidence, it is speculation. Staff asserts that the utility is responsible for providing the electricity to the meter – how the electricity is used and in what amounts is the responsibility of the customer. Because the meters were accurately recording the flow of electricity into the residence and the Complainants were billed for that amount of electricity, Staff asserts that there was no excessive billing or overcharging of the Complainants.

Id., pp. 3-4.

3. Alleged Grounding Issues

The Staff excepts to the ALJ's finding that a grounding issue caused the Simmonses to be overbilled. Staff's exceptions, p. 4 (citing PFD, p. 55). While the Staff agrees that a grounding issue could cause excessive use at the Simmonses' residence, it does not necessarily follow that the Simmonses were overbilled because the meter registers the electricity flowing into the residence and the evidence supports that the meters were accurate. The Staff reiterates its earlier statement that the meter becoming inaccurate over time is speculative. The Staff argues that "[b]ecause the meters were accurately recording the flow of electricity into the residence, there was no overbilling for the usage no matter the cause of the high usage." Staff's exceptions, pp. 4-5. Finally, the Staff points out that no cause of the alleged excess use has been established; thus, the issue remains unresolved and will continue to be so in the future. *Id*., p. 5. The "Staff therefore encourages the parties to fully examine each separate system (such as a full electrical inspection that includes a breaker-by-breaker test, home energy audit, etc.) to discover and correct this fault." *Id*.

4. Customer Right to a Refund Under Mich Admin Code, R 460.121

The Staff excepts to the ALJ's finding that the company's responsibility to inform customers of their right to a refund is implicit in Rule 21. Staff's exceptions, p. 5 (citing PFD, pp. 63-64). The Staff takes exception, stating that "nowhere in the rule is the utility placed as the initiator." Staff's exceptions, p. 6. The Staff argues that "[t]he plain language of Rule 21 does not place such an obligation [to inform customers of the right to a refund] upon the Company . . . ," and "[a]s such, it is Staff's position that utilities must be informed [of] what they are required to do and that if a notification requirement is required[,] Rule 21 should be amended to explicitly state that rather than a PFD finding a violation of this rule through implication." Staff's exceptions, p. 6.

5. Customer Rights to a Written Report Under Mich Admin Code, R 460.3601

The Staff excepts to the ALJ's finding that Rule 601(3) implicitly requires the company to provide customers with a written report of the results of a meter test. Staff's exceptions, pp. 6-7 (citing PFD, p. 60). The Staff argues that:

> the plain language of Rule 601 does not require the report be in writing. Again, it is Staff's position that utilities must be informed [of] what they are required to do and that if a meter test report is to be in writing, then Rule 601 should be amended to explicitly state that requirement rather than a PFD finding of a violation of the rule by implication.

Staff's exceptions, p. 7. The Staff also notes that the Simmonses acknowledged "that the utility verbally informed them of the test results." Staff's exception, p. 6 (citing PFD, p. 60).

6. Summary of the Commission Staff's Requests

The Staff contends that no meter inaccuracy has been proven and, therefore, no overbilling occurred. As such, the Staff requests the following:

> i. That it be found that the meters at the Complainants' residence were not inaccurate.
> ii. That there was no overbilling of electrical usage by Consumers.
> iii. That the possibility of a grounding issue does not mean that the Complainants were overbilled.
> iv. That Rule 21 was not violated by implication when the customer was not informed by the utility of the possibility of a refund in the monthly budget program.
> v. That Rule 601 was not violated by implication when the utility verbally informed the Complainants of the meter test results rather than informing them in writing

Staff's exceptions, pp. 7-8.

D. Dwight and Sharon Simmonses' Replies to Exceptions

1. Introduction

The Simmonses argue that Consumers' exceptions attempt "to reframe the dispute by focusing on meter accuracy while ignoring the central and unresolved issue: the defective grounding system" at their home. Simmonses' replies to exceptions, p. 1.[13] Additionally, the Simmonses disagree with the ALJ about his findings on Consumers' discovery production obligations, the inferences the ALJ drew from Consumers' late disclosures, the ALJ's findings of meter error, and the ALJ's application of Rules 15 and 607.

2. Grounding Defect is the Core Issue

The Simmonses contend that Consumers' reliance on meter accuracy is in error because a "defective grounding wire can cause stray currents to circulate within the home's wiring, which are then misread by the meter as legitimate energy consumption." *Id*. They further contend that a

[13] The Simmonses' replies to exceptions were not paginated; therefore, pages are referred to in natural order beginning with the first page of the replies to exceptions.

grounding defect "with high resistance or poor connections prevents fault currents from being safely discharged, resulting in inflated billing." *Id*. The Simmonses then condemn Consumers for failing to investigate or document the grounding issue along with stating that Consumers breached its duty by failing to produce a comprehensive report. *See, id*., p. 2.

3. Violation of Regulatory Requirements

The Simmonses contend that Consumers violated Rule 613a(2)(d) because it failed to conduct inspections of all of their meters when they were installed and removed, and that MRE 903 rendered Consumers' meter certifications as "inadmissible and devoid of evidentiary value" because the certifications were "lacking signatures." Simmonses' replies to exceptions, p. 2.

4. Pattern of Obstruction and Bad Faith

i. Administrative Law Judge Did Not Err in Finding Consumers Energy Company Deliberately Withheld Data

The Simmonses argue that the evidence supports a finding that Consumers explicitly stated that historical data usage was unavailable or had been destroyed, but it was only "after a clear ruling from the ALJ on discovery relevance" that Consumers produced pre-2018 usage data. *Id*. The Simmonses also point out that Consumers had previously asserted that it had no intention of using data that was before the look-back period in the Commission rules.

ii. Consumers Energy Company's Discovery Conduct was Deliberately Evasive

The Simmonses focus on meter no. 10108908, which Consumers deemed as "obsolete before later acknowledging communication failures and asserting exemption from testing meter nos. 3064595 and 10108908 under Rule 604 due to specific provisions and a Commission waiver." *Id*., pp. 2-3. The Simmonses contend that if a meter was removed due to a non-communication malfunction, then it should have been tested under Rule 604 because it was not, in fact, retired due to a scheduled upgrade.

Additionally, the Simmonses point to Consumers' handling of the grounding issue, its internal formula for usage increases without further review, its failure to submit documents requested by the November 2024 scheduling memo, its restriction of the Simmonses' access to meter protocols and grounding diagnostics, its failure to provide a grounding issue report despite the Simmonses requesting such several times, and its failure to test meter no. 3064595 at both installation and removal. *See*, *id*., p. 3. Thus, the Simmonses claim that Consumers violated its responsibilities under the Commission's rules "and fair utility service standards" and that the ALJ was correct in finding that Consumers acted in bad faith. *Id*.

5. Meter Accuracy and Burden of Proof

    i. Burden of Proof Mischaracterization

The Simmonses claim that Consumers ignored that "once prima facie evidence is presented, the burden shifts to the utility to rebut or explain discrepancies." *Id*. (emphasis in original). The Simmonses list the evidence they provided, such as invoices and high energy alerts, stating that such documentation allowed them to meet their initial burden, "shifting the onus to Consumers Energy to show that the meters functioned properly" which the company "failed to do comprehensively." *Id*., p. 4.

6. Request for Relief and Proposed Conditions Reveals Systematic Failure

The Simmonses state that Consumers' willingness to pay the ALJ's proposed refund amount acts as a "strategic admission of risk, reflecting a desire to suppress legitimate claims rather than resolve the underlying defect." *Id*.

7. Mich Admin Code, R 460.115

i. Discovery Complaints are Disingenuous

The Simmonses argue that Consumers did not engage in meaningful discovery under Rule 15(1); thus, the company "cannot claim procedural unfairness while actively obstructing discovery." Simmonses' replies to exceptions, p. 5.

ii. Consumers Energy Company's Objection

The Simmonses argue that Consumers' objection is misplaced because the company "produced incomplete screenshots and calculations that were vague, unexplained, and in some instances referenced the Simmons' [sic] primary residence." *Id*. (emphasis in original). The Simmonses allege that Consumers conflated the two properties to distort the Simmonses' expected baseline usage in an effort to portray the vacation home's usage as within a reasonable range.

The Simmons also assert that Consumers merely rubberstamped its EMMA reviews as some were merely five seconds, "which cannot constitute a 'meaningful review' under Rule 15" and as such, the ALJ properly found that the EMMA reviews were inadequate. Simmonses' replies to exceptions, p. 5.

8. Comparative Irregularities

The Simmonses clarify that they have two homes: a primary residence that is over 1,900 square feet, and the vacation home at issue that is 688 square feet. *See*, *id*. They also state that while their primary residence has electric air conditioning, their vacation home does not. However, they note that while their "primary residence's average monthly gas heating bill is $98 on a budget plan, . . . the vacation home's heating costs averaged over $300 per month regardless of enrollment in a budget plan." *Id*., p. 6. Thus, the Simmonses feel that there are unresolved system issues.

9. Mich Admin Code, R 460.121

The Simmonses maintain that Consumers failed to inform them of their right to refund credit balances under the equal monthly billing program. *See, id*. The Simmonses further note that none of Consumers' invoices nor its website mention the right to a refund, and as such, the ALJ was correct in finding that "utilities have an implicit duty to inform customers about their refund rights under equal monthly billing programs." *Id*. The Simmonses argue that Rule 21 exists to protect utility customers from a utility indefinitely using a customer's funds, "contrary to both public policy and the Commission's intent." *Id*. The Simmonses also argue that Consumers' reliance on the statutory interpretation of Rule 21 is incorrect because the Michigan Supreme Court "has repeatedly held that **where literal reading of a rule defeats its evident purposes, courts must adopt a construction consistent with legislative intent**." *Id*., p. 7 (emphasis in original).

10. Mich Admin Code, R 460.3601

Likewise, the Simmonses argue that Consumers was disingenuous in its argument that "verbal communication of meter test results satisfies" Rule 601(3). Simmonses' replies to exceptions, p. 7. Given that Rule 601(3) uses the words "a report of the results[,]" the Simmonses argue that Consumers wrongly asserted that only the record had to be in writing, whereas the report could be verbal. *Id*. Again, the Simmonses argue that such "ignores the **fundamental consumer protection purpose of the rule**." *Id*. (emphasis in original). The Simmonses also highlight that Consumers admitted that written records exist, and that the ALJ was therefore correct in finding that Rule 601 "**implicitly requires written reporting to customers**." *Id*., p. 8 (emphasis in original).

11. Grounding Issue

i. Grounding System versus Meter Accuracy

The Simmonses contend that it is not the meter accuracy results that matter in this case, but "whether the grounding system at the premises may have created conditions resulting in higher usage readings from the meters, even when the meters were technically 'accurate.'" Simmonses' replies to exceptions, p. 8. They contend that a faulty meter is different than a faulty grounding system, but that "a defective or degraded grounding wire can potentially affect billing accuracy." *Id*.

ii. Grounding Interference as the Root Cause

The Simmonses claim that Consumers' assertion that the grounding issue was traced to a neighboring line was contradicted by their continued high usage after their line was repaired, "multiple meters registering inflated readings[,]" and "Consumers' own acknowledgment of grounding interference." *Id*., p. 9. As such, the Simmonses assert that "Consumers cannot escape liability by blaming the customer for a systematic failure it failed to diagnose or correct." *Id*.

iii. Meter Accuracy Claims are Misleading and Irrelevant

In their replies to exceptions, the Simmonses outline various ways they feel that meters may register as accurate yet produce false readings, relying upon the ALJ's finding that the meters were registering inaccurately due to grounding. The Simmonses assert that the ALJ's finding amounts to a "billing error" and that "Consumers' attempt to redefine 'accuracy' is a transparent effort to dodge accountability." *Id*.

iv. Breaker-to-Breaker Test and the Grounding Issue

The Simmonses assert that Consumers' email exchanges regarding a breaker-by-breaker test were not "'settlement discussions' under MRE 407, but rather operational and technical communications regarding the safety and accuracy" of their service. *Id*. The Simmonses further argue that MRE 407 only applies "to **statements made in the course of actual settlement negotiations**, not to technical discussions initiated by the utility regarding fieldwork, system testing, or compliance issues." *Id*., p. 10 (emphasis in original).

v. Grounding Report

The Simmonses assert that the grounding report "has been central to this dispute" from the beginning, but that Consumers has failed to release such "despite repeated requests." *Id*. Due to Consumers' alleged refusal, the Simmonses contend that an adverse inference should be made against Consumers and that "[w]ithout disclosure of this report, Consumers' claims that the grounding issue was resolved or irrelevant must be rejected as unsubstantiated." *Id*.

12. Conclusion

The Simmonses point to the "ALJ's findings of meter error, procedural irregularities, and violations" of Commission rules which they feel are "firmly supported by the record." *Id*. As such, they ask the Commission for the following:

1. Reject Consumers Energy's Exceptions to the Proposal for Decision.
2. **Reject the Proposal for Decision** to the extent it limits relief to recent years.
3. Reject the 12-month limitation and apply a restitution window that reflets alerts and anomalies dating to 2013.
4. Direct an independent audit of Consumers' Rule 15 compliance and EMMA case handling as they pertain to residential customers.
5. Direct Consumers Energy to produce a comprehensive report on the grounding issue.
6. Hold Consumers accountable for its regulatory violations and evidentiary deficiencies.
7. Initiate regulatory review of Consumers Energy's waiver usage, compliant-handling practices, and internal meter validation protocols.

Id., pp. 10-11 (emphasis in original).

E. Consumers Energy Company's Replies to Exceptions

In its replies to exceptions, Consumers repeats that it did not act in bad faith "but has gone above and beyond what is required" including replacing a meter "merely because the Simmons [sic] alleged it had malfunctioned." Consumers' replies to exceptions, p. 2 (citing Consumers' exceptions, pp. 1, 5-17).

Consumers also addresses the Simmonses' request to allow them more than the one-year window the ALJ granted when finding that the company should issue a refund. As Consumers stated, "the ALJ simply interpreted Rule 15(4) according to its plain meaning and abided by it." Consumers' replies to exceptions, p. 3.

1. The ALJ Properly Declined to Recommend Sanctions

Consumers states that there are two reasons why the Simmonses are wrong for arguing that the ALJ erred in not sanctioning the company for alleged discovery abuse and obstruction. First, Consumers asserts that it is not guilty of "'deliberate obstruction or discovery abuse[,]'" and next, the Simmonses should have known that the Commission lacks statutory authority to impose sanctions. *Id*. (quoting Consumers' exceptions, pp. 5-17; citing Consumers' amended trial brief, pp. 16-18). Consumers then cites *Muskegon Agency, Inc v Gen Telephone Co of Mich*, 340 Mich 472, 482; NW2d 748 (1954), in which the Michigan Supreme Court held that the statutes that give the Commission its authority "do not provide the Commission with any general power to award damages[.]" Consumers' replies to exceptions, pp. 3-4. Consumers cites other cases that discuss the Commission's powers, and acknowledges that even if a utility acted improperly, the Commission lacks statutory authority to award economic loss damages. *See*, *id*., pp. 4-5. Thus, Consumers contends that its "decision to offer 'terms far more generous than those reflected in the PFD'" confirms that it acted in good faith. *Id*., p. 5 (citing Simmonses' exceptions, p. 2).

2. The Administrative Law Judge Properly Limited the Credit Refund to 12 Months

Consumers takes exception to the fact that the Simmonses argue, for the first time in their exceptions, that Rule 15a permits remedial billing beyond six years. Consumers' replies to exceptions, p. 5 (citing Simmonses' exceptions, p. 3). Furthermore, Consumers highlights that the Simmonses "did not demonstrate any 'inaccuracy in registration,' let alone explain why this particular subsection should apply." Consumers' replies to exceptions, p. 6 (quoting Rule 15a(4)). Consumers alleges that no matter how they "seek to frame their request for relief," the Simmonses are "limited to one year of refunds, if they are entitled to relief at all." Consumers' replies to exceptions, p. 6.

3. Dwight and Sharon Simmonses' Negligence Claims Must Fail

Consumers objects to the Simmonses' claim that the utility was guilty of "'utility negligence[,]'" stating that it has already explained why the Simmonses' high bills were not caused by a grounding issue. *Id.*, pp. 6-7 (quoting Simmonses' exceptions, pp. 3-4). Furthermore, Consumers notes that "the Commission has acknowledged that it lacks jurisdiction, even primary jurisdiction, to hear negligence claims that sound in tort." *Id*, p. 7 (citing the September 25, 2007 order in Case No. U-14912, p. 19).

4. A Grounding Issue Did Not Contribute to Dwight and Sharon Simmonses' High Bills

In its replies to exceptions, Consumers addresses the Simmonses' argument that the ALJ mischaracterized an alleged grounding issue as a meter issue which would have allowed them to receive more than one year of refund. Consumers' replies to exceptions, p. 7. Consumers again alleges that the Simmonses "blocked the Company's attempts to investigate the cause of their high use at every turn" while refusing to "take basic energy-saving measures . . . like winterizing their residence or at least turning down the thermostat when they are away." *Id.*, pp. 7-8 (citing

Consumers' exceptions, pp. 44-50). Consumers states that "the grounding issue is a non-issue" despite the Simmonses changing their position "in an attempt to bolster their case against the Company and create an issue where there is none." Consumers' replies to exceptions, p. 10.

5. There was No Meter or Billing Error

Consumers posits that the Simmonses brought up that their alleged overcharges were not meter errors but actually billing errors for the first time in their exceptions. *Id*. (citing Simmonses' exceptions, p. 6). However, Consumers contends, this "factual premise and legal conclusion are not grounded in record evidence and require no further response." Consumers' replies to exceptions, p. 10 (citing *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998)). Consumers further reminds the Commission that even if there was an improperly grounded wire at the Simmonses' residence, it "would be a meter issue and not a billing issue" and that "Rule 2(e) specifies that an overcharge caused by a meter error is not a billing error." Consumers' replies to exceptions, p. 11 (citing Rule 2(e)).

6. A Meter Error is Different from a Billing Error

Consumers states that the Commission's own rules distinguish billing errors from meter errors, despite the Simmonses' trying to conflate the two. *See*, Consumers' replies to exceptions, p. 11 (citing Rule 2(e) and 2a(1)).

7. There was No Failure to Preserve Evidence Per Mich Admin Code, R 460.115(1)

Consumers claims that the Simmonses' exception title which alleges "a 'failure to preserve evidence' is misleading because they ultimately make no claim or argument that the Company failed to preserve evidence" and that it "disregarded its discovery obligations" under Rule 15(1). Consumers' replies to exceptions, p. 12 (quoting Simmonses' exceptions, p. 7). Consumers alleges that the Simmonses conflate two issues as "Rule 15(1) is not related to the removal and testing of meters but rather to tolerance limits related to customer usage at a single residence" and that "there was no discovery around the issue as it was not raised until after the discovery period had ended." Consumers' replies to exceptions, p. 12 (citing Simmonses' exceptions, p. 7; Consumers' exceptions, pp. 31-34). Consumers concludes that Rule 15(1) has "no bearing on the relief requested" and "would not support 'usage recalibration from [the] full complaint period.'" Consumers' replies to exceptions, p. 12 (quoting Simmonses' exceptions, p. 7).

8. Meter Removal Without Testing is Consistent with Standard Utility Practices

Consumers highlights that the Simmonses cite Rule 51 which involve gas service standards, that the Simmonses "notably do not have at their residence." Consumers' replies to exceptions, p. 12 (referencing 5 Tr 132). Consumers notes that the Simmonses reference Rule 604, which states that a meter must be tested "unless retired for obsolescence" while stating that "it is contradictory to say that the meter was retired for obsolescence and also under a waiver." Consumers' replies to exceptions, p. 12. Consumers explains that "obsolescence refers to the meter being outdated and does not imply a functional failure" and that "the waiver was for the purpose of upgrading 3G meters to 4G technology without testing the 3G meters since they were obsolete." *Id*., pp. 12-13. Consumers alleges that the Simmonses are incorrect by "attempting to define obsolescence as a functional failure" and that while the Simmonses' meter stopped transmitting, it was still accurately recording the Simmonses' electrical usage. *Id*., p. 13.

9. Mich Admin Code, R 460.3613a

Consumers opposes the Simmonses' attempt to raise an issue of incomplete meter testing under Rule 613a after the PFD was issued. *See*, *id*. While Consumers contends that there were no allegations on whether the Simmonses' meters were inspected for mechanical or electrical faults, such was mentioned by the ALJ on page 57 of the PFD, alleging a violation of Rule 613a(2)(d).

However, as the company noted, while “Michigan Court Rules allow for liberal amendment of pleadings, pleadings must in fact be amended so that the Company is afforded due process to build a case defending against the claims being made.” *Id*. (citing Consumers’ exceptions, pp. 37-40) (discussing MCR 2.118(C)(1)). Consumers alleges that the “ALJ made assumptions in the PFD about meter testing without supporting evidence in the record.” Consumers’ replies to exceptions, p. 14 (citing PFD, p. 57; Consumers’ exceptions, pp. 40-44; Staff’s exceptions, pp. 5-7).

Furthermore, Consumers argues that Rule 601 “does not specify what records kept by the Company should or should not say” and as such, there is no Rule 613a violation “for records that did not include signatures” as suggested by the Simmonses. Consumers’ replies to exceptions, p. 14 (citing Simmonses’ exceptions, p. 9). Consumers states that “Rule 613a has not been an issue, so the Simmons[es] do not have a credible basis to conclude that there is a rule violation based on a Company exhibit not containing information that there is no requirement for it to contain.” Consumers’ replies to exceptions, p. 14.

Consumers also states that the Simmonses appear to misunderstand MRE 903 in connection to the unsigned meter reports. As Consumers notes, the company “had a witness present to authenticate the reports” and the Simmonses did not object at the December 17 hearing, when such an objection would have been appropriate. *Id*., pp. 14-15.

10. No Pattern of Obstruction or Data Manipulation

Consumers addresses the Simmonses’ complaint that the company was on the Simmonses’ property without notice, stating that the Simmonses “appear to acknowledge that the purpose was to check Company equipment” in response to their continued complaints, and argues that the Simmonses did not explain how that inspection was a problem. *See*, *id*., p. 15.

Furthermore, Consumers mentions Belasco's findings which differ from the company's, but states that "there is no reason the Belasco letter should be given more weight . . . than the Company's investigation . . . particularly since Belasco did not specifically identify the houses it checked." *Id*.

11. Consumers Energy Company Complied with Mich Admin Code, R 460.150

Consumers notes that it, the ALJ, and the Staff all concluded that Rule 50 was not violated and argues that the ALJ was correct in finding that the Simmonses have "'not provided evidence that Consumers failed to investigate their complaints.'" *Id*. (quoting PFD, p. 67).

12. Consumers Energy Company Timely Investigated a Possible Grounding Issue

Consumers reminds the Commission that the company did investigate a possible grounding issue despite the Simmonses' allegation to the contrary. *See*, Consumers' replies to exceptions, p. 16 (citing Simmonses' exceptions, pp. 12-13; Consumers' replies to exceptions, pp. 7-10).

13. Conclusion

Consumers concludes its replies to exceptions by noting that there was no evidence of a billing or meter error, nor was a grounding issue responsible for the Simmonses' high bills but instead, it was the Simmonses' own "uneconomic energy consumption habits that were the culprit." Consumers' replies to exceptions, p. 16. As such, Consumers asserts that it did not violate any Commission rules and that the Commission should dismiss the complaint with prejudice.

VII. DISCUSSION

The Commission appreciates the ALJ's analysis of the complex issues and his recommendations in this matter, and it agrees in part and disagrees in part, as discussed below.

A. Withholding Evidence

The Commission does not agree with the ALJ that Consumers deliberately withheld evidence such that an adverse inference against the company is warranted. *See*, PFD, p. 27. It has been previously found that the Commission "need only draw an adverse inference whenever information it reasonably believes is relevant and within the control of an affiliate or other related entity has not been furnished." *Midland Cogeneration Venture Ltd Partnership* v *Pub Serv Comm*, 199 Mich App 286, 325; 501 NW2d 573 (1993). Here, Consumers argued that information requested by the Simmonses was irrelevant as they asked for information dating back to 2013 and there is a one-year window for refunds and credits per Rule 15.

Given that much of the information requested in discovery was outside the one-year window for meter errors included in Rule 15(4), the three-year window for billing errors included in Rule 26a(1), or even the six-year window for records retention under Rule 15a, and also noting that Consumers provided information going back six years, the Commission finds that Consumers has shown it has a reasonable explanation for why it did not produce all the documents requested.

However, parties to a case are encouraged to cooperate in good faith and reach agreements, where possible, regarding the discovery process, the exchange of information, and the resolution of any discovery disputes. Consumers' responses, while technically in compliance, barely met this standard. This resulted in an incomplete and obstructed exchange of relevant information, as the ALJ outlined on pages 29-37 of the PFD. The Commission is deeply troubled by Consumers' failure to comply fully with its discovery obligations by withholding responsive information and impeding the discovery process, ultimately undermining transparency and the integrity of the investigatory process; however, as mentioned above, the Commission does not feel this requires a finding of adverse inference. Consumers' behavior in the discovery process of this case falls well short of any reasonable expectation for what constitutes good faith in interactions between regulated utilities and their customers, including in instances involving disputes.

B. Meter Accuracy, Reporting Requirements, and Credit Refund

Regarding meter accuracy, the ALJ stated that Rule 607(1)(a) required meters to be "'in good mechanical and electrical condition.'" PFD, p. 56 (citing Rule 607(1)(a)). The ALJ also indicated that Rule 613(7) provides that "all solid-state meters must be checked for accuracy when a meter is suspected of being inaccurate or damaged . . . ." PFD, pp. 56-57. Regarding the Simmonses' meters, the ALJ found that while all four meters tested within the Commission's accuracy standards, a March 6, 2024 electrical inspection report from Belasco found that the Simmonses' most recent meter had a problem with the grounding system. *Id.*, pp. 15, 54, 56. However, the ALJ found that Consumers violated Rules 2a(1) and 607(1)(a) because "all four of the meters installed at the Simmons[es's] Property failed to accurately measure and record electricity usage due to a grounding problem." PFD, p. 58.

Notably, Consumers provided evidence that all four meters were consistent and within the Commission's accuracy range, and that there were no grounding issues found on the Simmonses' meter or on company systems near the Simmonses' meter, but that the company nevertheless replaced neutral connections as part of the investigation. *See*, 5 Tr 227-228. Consumers' witness, Ms. Miller, testified that a grounding issue on the company side would not affect usage as measured by the customer's meter because "[t]he meter measures from the line side to the customer's load side and does not have a reference to the grounded neutral." 5 Tr 226. She added that a grounding issue on the customer side could cause inefficient energy use at the meter if there was a bad connection, but the company could only diagnose a grounding issue on a customer's side with a breaker-by-breaker test. 5 Tr 224-225. Furthermore, the Simmonses refused

Consumers' offer to perform a breaker-by-breaker test, instead moving forward with a test without Consumers' knowledge or participation which was not a true breaker-by-breaker test. 5 Tr 119-120, 225.

Consumers admitted that it did not test each of the Simmonses' four meters upon removal, but stated that it was because meter no. 10108908 was not required to be tested after removal as it was removed for the installation of AMI, and meter no. 10108909 did not require testing after removal as it was retired for obsolescence when it stopped communicating. *See*, 5 Tr 203.

The Commission finds that Consumers did not violate Rule 2a, Rule 15, Rule 607, or 613. These rules were not violated because the meters that were required to be tested all tested within the Commission's range of accuracy, and the untested meters were not required to be tested under the Commission's rules and waivers. *See*, 5 Tr 203; 6 Tr 379-380; Consumers' replies to exceptions, p. 12.

C. Meter Report

Rule 601(3) provides as follows:

> A report of the results of the test must be made to the customer within a reasonable time after the completion of the test, and a record of the report, together with a complete record of each test, must be kept on file at the office of the electric utility or cooperative.

The Simmonses asserted that the ALJ correctly found that Consumers violated Rule 601 because the utility did not provide a written report of the January 12, 2024 meter test results. *See*, Simmonses' replies to exceptions, p. 8. However, the Staff testified that Consumers communicated the January 12, 2024 meter testing results to the Simmonses in the field and that Exhibit S-1.4 shows meter testing results for the meter, thus the company was in compliance with Rule 601. *See*, 5 Tr 202; *see also*, Exhibit S-1.3, 1.4. In short, no one argued that the Simmonses did not receive the January 12, 2024 meter test results. The Commission disagrees with the ALJ that there was an implicit requirement in Rule 601 that requires written reporting to customers. *See*, PFD, p. 61. The Commission agrees with the Staff that the plain language of Rule 601(3) has no mention of a written report requirement; to require a written report would require an amendment of the rule to explicitly state such. *See*, Staff's exceptions, p. 7. Indeed, the language of Rule 601(3) requires a "report" of the test results to be provided to the customer, while requiring "a record of the report . . . to be kept on file at the office of the electric utility." This differentiation between a report (which, as noted, is allowed to be written or oral in other parts of the Commission's rules) and a record of the report further supports the contention that no requirement that the report be written exists in Rule 601(3). As such, the Commission finds that there was no violation of Rule 601; however, the Commission encourages Consumers to provide written copies of meter testing reports when customers request meter testing in the future.

D. BudgetWise Billing Overbill Refund

Rule 21 states that, "a utility shall . . . upon the request of the customer . . . either return the credit balance or credit it to the next month's bill. If the balance is less than $10.00, the utility shall credit the amount to the residential customer's account."

In the Simmonses' complaint, they allege that Consumers violated Rule 21 because the company did not inform them of their right to refunds for overpayments on their BudgetWise Billing Plan. *See*, complaint, p. 19. Consumers alleged that the Simmonses did not present any evidence of requesting their balance be returned or credited to their next month bill, and the ALJ agreed with Consumers. *See*, Consumers' post-trial brief, p. 14; PFD, p. 63.

The ALJ found an implicit requirement in Rule 21 that a "utility is required to inform the customer of their right under the Rule to request a return of any credit balance." PFD, p. 63. However, the Commission disagrees with the ALJ due to the plain language found in Rule 21.

Furthermore, as shown in the Simmonses' own complaint attachments, it is obvious that Consumers proactively provided the Simmonses with a billing credit when a credit was accrued. *See*, complaint, pp. 31, 33, 107-108. As such, the Commission does not find that there was a violation of Rule 21; however, the Commission encourages Consumers to provide notice of credits to their customers per the utility's willingness "to do more, *going forward*, to inform customers that they have this option (e.g., updating its website)." Consumers' exceptions, p. 43 (emphasis in original).

E. The Michigan Public Service Commission Staff's Investigation Process

The Commission finds the ALJ's recommendation that Consumers did not violate Rule 50 well-reasoned and supported by the record, and therefore finds that Consumers did not violate Rule 50. *See*, PFD, pp. 66-67.

F. Public Apology

The Commission finds the ALJ's recommendation that the Commission cannot provide the requested relief to be well-reasoned and supported by the record, and therefore finds that Consumers does not need to issue the Simmonses a public apology. *See*, PFD, pp. 84.

THEREFORE, IT IS ORDERED that the complaint filed by Dwight and Sharon Simmons against Consumers Energy Company is dismissed with prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at LARA-MPSC-Edockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at sheac1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Shaquila Myers, Commissioner

By its action of June 11, 2026.

Lisa Felice, Executive Secretary

P R O O F   O F   S E R V I C E

STATE OF MICHIGAN)

Case No. U-21587

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on June 11, 2026 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Brianna J. Brown

Brianna Brown

Subscribed and sworn to before me
this 11th day of June 2026.

Angela P. Sanderson

Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2030

Service List for Case: **U-21587**

Name	On Behalf Of	Email Address
Consumers Energy Company (1 of 2)	Consumers Energy Company	mpsc.filings@cmsenergy.com
Consumers Energy Company (2 of 2)	Consumers Energy Company	kelly.hall@cmsenergy.com
Dwight and Sharon Simmons	Dwight and Sharon Simmons Household	[redacted]
Evan B. Keimach	Consumers Energy Company	evan.keimach@cmsenergy.com
Jonathan F. Thoits	ALJs - MPSC	thoitsj@michigan.gov
Michael J. Orris	MPSC Staff	orrism@michigan.gov
Spencer A. Sattler	Consumers Energy Company	spencer.sattler@cmsenergy.com