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June 12, 2023

**VIA ELECTRONIC CASE FILING**

Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, Michigan 48917

**Re: MPSC Case No. U-21416: In the matter of the ex parte application of Consumers Energy Company for accounting approval to utilize a regulatory asset or liability for certain projects related to funding from the Infrastructure Investment and Jobs Act of 2021.**

Dear Executive Secretary:

Enclosed for filing please find the **Association of Businesses Advocating Tariff Equity's Petition to Intervene** and **Proof of Service** in the above-referenced case.

Should you have any questions or comments regarding this matter, please do not hesitate to contact my office.

Sincerely,

**CLARK HILL PLC**

Stephen A.  
Campbell

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Date: 2023.06.12 15:25:20 -0400'

Stephen A. Campbell

SAC/lkd

cc w/enc.: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the Matter of the <i>ex parte</i> Application of	)	
<b>CONSUMERS ENERGY COMPANY</b>	)	Case No. U-21416
for accounting approval to utilize a	)	
regulatory asset or liability for certain projects	)	
related to funding from the Infrastructure	)	
Investment and Jobs Act of 2021.	)	
_____	)	

**PETITION TO INTERVENE OF THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by and through its attorneys, Clark Hill PLC, hereby petitions the Michigan Public Service Commission (“Commission”) for leave to intervene in this case pursuant to Mich Admin Code, R 792.10410 (“Rule 410”) of the Commission’s Rules of Practice and Procedure, and requests the Commission either reject Consumers Energy Company (“Consumers” or “Company”)’s request for ex parte approval and instead direct the Company to include this project and any associated costs in its current (Case No. U-21389) or future rate case, or initiate a contested case pursuant to Mich Admin Code, R 792.10415 et seq. and MCL 24.101 et seq. Alternatively, if the Commission approves the deferred accounting approach requested by Consumers, it should require the Company to confirm how long the deferral will last and ensure that there is ultimately no double recovery of costs associated with this project. In support of this petition, ABATE states as follows:

1. ABATE is a voluntary association of large industrial companies that conduct business throughout the state of Michigan. The primary purpose of ABATE is to participate in state and federal regulatory proceedings to protect the interests of businesses in connection with energy and utility matters. To that end ABATE consistently advocates for cost-of-service based

energy rates, equitable terms of service, and increased access to a competitive energy market. ABATE is also interested in assuring that rates, surcharges, and conditions of service are adopted in conformance with the law and in a fair and reasonable manner.

2. Collectively, ABATE's members employ nearly 100,000 Michiganders and spend approximately \$1.5 billion on energy and related services in Michigan each year. As the representative of such large users of electricity, natural gas, and transportation services, ABATE is vitally interested in achieving increased economic efficiencies for the utilities that serve its members.

3. Present members of ABATE include: Cargill, Inc.; Charles River Laboratories; Cleveland-Cliffs Inc.; The Dow Chemical Company; DW-National Standard-Niles, LLC; Edw. C. Levy Co.; Enbridge Energy, Limited Partnership; ERVIN Industries Inc.; General Motors LLC; Gerdau Macsteel INC; Graphic Packaging International, Inc.; Hemlock Semiconductor Operations LLC; J. Rettenmaier USA LP; Linde, Inc.; Marathon Petroleum Company LP; Martin Marietta Magnesia Specialties LLC; Metal Technologies, Inc.; Occidental Chemical Corporation; OX Engineered Products; Pfizer-Kalamazoo; Stellantis; United States Gypsum Company; WestRock California, Inc.; and Zoetis LLC.

4. ABATE members are directly impacted by the issues raised in this proceeding and have a substantial interest therein because ABATE members are concerned about the proposals made in Consumers' Application for approval to, among other things, establish and utilize a regulatory asset or liability for certain projects related to funding from the Infrastructure Investment and Jobs Act ("IIJA") of 2021. Specifically, the Company's Application raises concerns regarding the Company's cost accounting and the resulting potential rate impact to

ABATE members. ABATE will thoroughly explore the impact of the Company's Application on its members and may take new and different positions following discovery.

5. Although Rule 410 speaks in terms of *leave to intervene*, the Commission has indicated that it considers the ability to intervene to be one of right when a petitioner can meet the two-prong test for standing.<sup>1</sup> This test requires a showing that the prospective intervenor will (1) suffer an injury in fact as a result of the outcome of the case; and (2) the interests allegedly endangered fall within the zone of interests intended to be protected or regulated by the statute or constitutional guarantee in question.<sup>2</sup>

6. ABATE meets the two-prong test for standing because, as customers of the Company, ABATE members have a direct financial and operational interest in the amount, rates, terms, tariffs, programs, and conditions of service for the Company's customers. If authorized by the Commission, the proposals set forth in the Company's Application will have a direct impact on the service ABATE's members receive and the rates that ABATE's members pay. ABATE's interest in the adoption of reasonable and prudent utility rates, services, and operations falls within the zone of interests to be protected by the Commission's consideration of the issues in this proceeding.

7. In addition to meeting the conditions for intervention by right, ABATE meets the Commission's criteria for permissive intervention. As recognized in prior Commission orders, "the Commission's discretion to grant leave to intervene is broader than the two-prong test . . . Unlike

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<sup>1</sup> The United States Supreme Court established the two-prong test for standing in *Association of Data Processing Service Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 25 L Ed 2d 184 (1970), applied to utility matters in *Drake v The Detroit Edison Co*, 453 F Supp 1123, 1127 (WD Mich, 1978), and adopted by the Commission in its November 10, 1988 Order in Case No. U-9138.

<sup>2</sup> *In re Consumers Energy for authority to implement a power supply cost recovery plan*, MPSC Case No. U-17317, March 6, 2014 Order, p 4 (emphasis added).

a court of law, an administrative agency can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor's participation."<sup>3</sup> Permissive intervention has also been granted where a proceeding "raises novel questions and important issues of policy" and the intervenor will "bring a unique perspective" to the case.<sup>4</sup>

8. ABATE has regularly participated in electric and natural gas proceedings before the Commission and federal regulatory bodies for nearly three decades. As in prior cases, ABATE will provide the Commission with useful and unique information through the testimony and comments of its experts. ABATE will also scrutinize the reasonableness and prudence of the Company's proposals through necessary and appropriate means. These efforts will assist the Commission in making significant policy determinations in this case and will "bring helpful information to the Commission's attention that might not otherwise be available."<sup>5</sup> As such, ABATE meets the test for permissive intervention.

9. ABATE will carefully examine the reasonableness and prudence of the Company's Application and will carefully review and analyze the impact the requests and proposals contained therein will have on ABATE members, the rates charged thereto, and the service taken thereby.

10. ABATE will take the position that the Company's Application should be carefully scrutinized and any unjustified, unsubstantiated, imprudent, unreasonable, or unlawful costs, requests, or proposals should be disallowed.

11. For instance, the Company's Application should not be granted ex parte relief.

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<sup>3</sup> *In re Michigan Consolidated for authority to increase its rates*, MPSC Case No. U-10150, December 8, 1992 Order, p 5.

<sup>4</sup> *In re Consumers Energy to fully comply with Public Act 295 of 2008*, MPSC Case No. U-17771, October 27, 2015 Order, p 6, citing *In re Mascotech Forming Technologies*, MPSC Case No. U-11057, June 5, 1996 Order, pp 2-3.

<sup>5</sup> *In the Matter, on the Commission's own motion*, MPSC Case No. U-18091, February 21, 2019 Order, p 9.

12. While MCL 460.6a(3) states that “[a]n alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers *may* be authorized and approved without notice or hearing,” the Company’s Application is unreasonable and the requested relief should not be granted. Specifically, the Application requests the Commission unnecessarily permit Consumers to establish a regulatory asset or liability associated with a \$100,310,996 expenditure (exceeding a required funding match for IJA funding through Funding Opportunity Announcement (“FOA”) Number DE-FOA-00002740 of \$100,000,000), which project is entitled Sectionalization & Circuit Improvements to Mitigate Outage Impacts for Disadvantaged Communities.

13. While the Application asserts that the requested regulatory asset or liability is to allow for DOE negotiations while preventing a disconnect between applicable amounts in rates and the actual amounts in rates caused by the receipt of IJA funding for amounts that are currently included in rates or by necessary matching funds expended by the Company that have not been included in rates, the Application does not explain why the Company cannot otherwise track or account for the asserted expenditures as it does any other cost. Given Consumers’ rate base (which the Commission’s March 17, 2022 Order in Case No. U-20963 established at over \$4.1 billion), the proposed matching funds do not necessitate a separate regulatory asset or liability.

14. Further, despite the Company’s general assertions regarding the project as set out in its Application, the Company hasn’t provided sufficient details regarding the scope, goals, or benefits of the project, such as whether it is a revenue generating project or may produce O&M savings for ratepayers.

15. In addition, beyond noting that it seeks to prevent a disconnect between amounts in rates and actual expense experienced the Company’s Application does not show that the utility

would be financially harmed or that it wouldn't have an opportunity to earn its authorized return without the Commission's approval of a regulatory asset or liability. In other words, Consumers has not provided any evidence to suggest that its financial integrity would be negatively affected or that these costs could not be accurately tracked and accounted for if deferred accounting is not granted.

16. Examination of this issue in a contested case, such as the Company's current or a future rate case will instead give the Commission the ability to assess the totality of Consumers' revenue requirement, including this project and these costs, to determine if a regulatory asset or liability is necessary, as well as its impact on Consumers' financial risk if not approved. In other words, the Commission and stakeholders should have the opportunity to review all of Consumers' revenues and costs before determining if a regulatory asset or liability is reasonable or prudent and, if it is, how and when the costs should be trued-up and what recovery methodology should be used. None of that is addressed in this proceeding and should instead be considered in the Company's current or future electric rate case.

17. Stated differently, this project and the associated purported matching costs should be reviewed in the Company's current or future rate case, along with all the other costs and revenues for Consumers' projected test year. The Company's current rate Case No. U-21389 utilizes a future test year of 12 months ending February 28, 2025. If the project(s) for which deferred accounting has been requested may be in service prior to or during this projected test year there would be minimal regulatory lag associated with consideration and approval or rejection of cost recovery.

18. In short, the Company's Application raises numerous questions regarding its proposal, including whether the requested regulatory asset or liability is actually necessary

considering the Company's overall revenue and costs and its rate case filing. As such this project and any regulatory asset or liability should be considered in the Company's current or future rate case proceeding to provide the Commission and stakeholders an opportunity for comprehensively reviewing the Company's plans, revenues, and costs.

19. In any event, if the Commission approves the deferred accounting approach requested by Consumers, it should require the Company to confirm how long the deferral will last and ensure that there is ultimately no double recovery of costs associated with this project.

20. ABATE will seek an order in this proceeding approving rates, terms, programs, and conditions of service which are just, fair, reasonable, prudent, and lawful.

21. The interests of ABATE and its members are not adequately represented and, therefore, it would be detrimental to the public interest to deny this petition to intervene.

22. ABATE reserves the right to take other positions and/or seek other relief based on a review of the various filings, the responses to discovery, or positions taken in briefs.

**WHEREFORE**, ABATE requests that the Commission grant ABATE's Petition to Intervene in and be treated as a full party hereto and requests that the Commission reject the Company's request for ex parte approval and instead direct the Company to include this project and any associated costs in its current rate case (Case No. U-21389) or future rate case, or schedule this matter for contested case proceedings pursuant to Mich Admin Code, R 792.10415 et seq. and MCL 24.101 et seq. Alternatively, if the Commission approves the deferred accounting approach requested by Consumers, it should require the Company to confirm how long the deferral will last and ensure that there is ultimately no double recovery of costs associated with this project.

Respectfully submitted,

**CLARK HILL PLC**

Stephen A.

By: Campbell

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Date: June 12, 2023

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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for accounting approval to utilize a	)	
regulatory asset or liability for certain projects	)	
related to funding from the Infrastructure	)	
Investment and Jobs Act of 2021.	)	
_____	)	

**PROOF OF SERVICE**

STATE OF MICHIGAN     )  
   ) ss  
 COUNTY OF WAYNE     )

Stephen A. Campbell, being first duly sworn, deposes and says that on June 12, 2023 he did cause to be served the *Association of Businesses Advocating Tariff Equity’s Petition to Intervene*, as well as this *Proof of Service*, in the above docket, via electronic mail, to the persons identified on the attached service lists.

Stephen A.  
Campbell



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Stephen A. Campbell

**SERVICE LIST**  
**MPSC Case Nos. U-21416**

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