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February 6, 2024

**VIA ELECTRONIC CASE FILING**

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

**Re: MPSC Case No. U-21090: In the matter of the application of Consumers Energy Company for approval of an integrated resource plan pursuant to MCL 460.6t and for other relief.**

Dear Executive Secretary:

Enclosed for filing please find the **Association of Businesses Advocating Tariff Equity's Objection and Motion for a Contested Case Proceeding** 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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**Stephen A. Campbell**

SAC/lkd

cc w/enc.: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of	)	
<b>CONSUMERS ENERGY COMPANY</b>	)	
for Approval of an Integrated Resource Plan	)	Case No. U-21090
under MCL 460.6t, certain accounting	)	
approvals, and for other relief.	)	
_____	)	

**OBJECTION AND MOTION FOR A CONTESTED CASE PROCEEDING 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 objects and moves the Michigan Public Service Commission (“Commission”) to reject Consumers Energy Company (“Consumers” or the “Company”)’s requests for ex parte approval of two applications regarding power purchase agreements (“PPAs”) filed in this docket on January 12, 2024, and instead initiate a contested case proceeding pursuant to Mich Admin Code, R 792.10415 et seq., MCL 24.201 et seq., and Mich Admin Code, R 792.10432 or, alternatively, clarify that the Commission is not approving recovery by Consumers of all payments under the PPAs for the purposes of Section 6j of 1982 PA 304, MCL 460.6j, nor is it determining such recovery is reasonable or prudent in this proceeding. In support of this objection and motion, ABATE states as follows:

1. ABATE previously filed a petition to intervene in this docket on July 15, 2021, which petition was granted by the presiding administrative law judge on July 22, 2021.
2. On January 12, 2024 the Company filed applications (“Applications”) for approval of two PPAs, one with Tibbits Energy Storage, LLC (“Tibbits”) for the output of the Tibbits battery energy storage project, and one with Freshwater Solar, LLC (“Freshwater Solar”) for the output of the Freshwater Solar project.

3. The Application for the Tibbits PPA asserted that the “Tibbits PPA provides for energy, capacity, Incentive Storage Renewable Energy Credits, and ancillary services to the Company in exchange for a Fixed Energy Payment of \$14.54/MWh based on availability” and “has an estimated cost to customers of \$366 million in PPA supplier payments and \$21 million in cost attributable to the [Financial Compensation Mechanism (“FCM”)] for the 20-year term,” which “costs will result in a total forecast cost of \$387 million.”

4. The Application for the Freshwater Solar PPA asserted that the “Freshwater Solar PPA provides for the purchase of energy at a fixed rate of \$59.90/MWh” and “has an estimated cost to customers of \$677.3 million in PPA supplier payments and \$38.3 million in cost attributable to the FCM for the 20-year term,” which “costs will result in a total forecast cost of \$715.7 million or \$63.29/MWh levelized cost of energy (“LCOE”).”

5. Both Applications requested the Commission approve the PPAs “on an ex parte basis without the time and expense of a public hearing” and “specifically indicate that the Commission approves the recovery by Consumers Energy Company of all payments under the Power Purchase Agreement for the purposes of Section 6j of 1982 PA 304, MCL 460.6j, and all other applicable law.”

6. This requested relief sought in the Company’s Applications should not be granted on an ex parte basis.

7. 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 Applications request the Commission approve cost recovery of all payments made under the PPAs, which together have a cost forecast over \$1.1 billion.

8. While the Applications for the Tibbits PPA and Freshwater Solar PPA assert that “the Tibbits PPA was entered in a manner consistent with the requirements set forth in the Settlement Agreement in Case No. U-21090 and is at a cost which is consistent with the modeled battery storage resource costs in the Proposed Course of Action in the Company’s IRP,” and “the PPA with Freshwater Solar was acquired in a manner consistent with the requirements set forth in the Settlement Agreement approved by the Commission in its June 23, 2022 Order Approving Settlement Agreement in Case No. U-21090 and is at a cost which is consistent with the modeled solar resource costs in the Company’s IRP PCA,” respectively, that Settlement Agreement makes no reference to ex parte approval of PPAs or cost recovery related thereto.

9. In addition to requesting cost recovery approval, and therefore not meeting the statutory requirements for ex parte approval, the Applications raise significant issues regarding the manner of cost recovery in the Company’s rates, including the manner in which the PPAs would identify and treat capacity and energy costs.

10. More specifically, the PPAs implicate issues regarding the structure of contract pricing and how the total cost of each PPA will be broken down between demand and energy related production costs.

11. In short, the Company’s Applications do not meet the statutory requirements for ex parte approval to the extent they request cost recovery approval and raise numerous questions regarding contract elements, including pricing and cost category distinctions. As such ex parte approval is not reasonable, prudent, or appropriate here.<sup>1</sup>

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<sup>1</sup> The Commission “has only the authority granted to it by statute.” *In re Consumers Energy Co*, 322 Mich App 480, 490 (2017); *Union Carbide Corp v Public Serv Comm*, 431 Mich 135, 148 (1988) (“The commission is a creature of the Legislature and, as such, possesses only those powers granted upon it by statute”).

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

13. The interests of ABATE and its members are not adequately represented and, therefore, it would be detrimental to the public interest to deny this objection and motion for a contested case proceeding or, alternatively, clarify that the Commission is not approving recovery by Consumers of all payments under the PPAs for the purposes of Section 6j of 1982 PA 304, MCL 460.6j, nor is it determining such recovery is reasonable or prudent in this proceeding.

14. 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 testimony and briefs, as applicable.

**WHEREFORE**, ABATE requests that the Commission grant ABATE's Objection and Motion for a Contested Case Proceeding and requests that the Commission reject the Company's request for ex parte approval of the Applications and instead schedule these Applications for contested case proceedings pursuant to Mich Admin Code, R 792.10415 et seq., MCL 24.201 et seq., and Mich Admin Code, R 792.10432 or, alternatively, clarify that the Commission is not approving recovery by Consumers of all payments under the PPAs for the purposes of Section 6j of 1982 PA 304, MCL 460.6j, nor is it determining such recovery is reasonable or prudent in this proceeding.

Respectfully submitted,

**CLARK HILL PLC**

Stephen A. Campbell

By: \_\_\_\_\_

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Date: February 6, 2024

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In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
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under MCL 460.6t, certain accounting )  
approvals, and for other relief. )  
\_\_\_\_\_ )

Case No. U-21090

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
) ss  
COUNTY OF WAYNE )

Stephen A. Campbell, being first duly sworn, deposes and says that on February 6, 2024 he did cause to be served the *Association of Businesses Advocating Tariff Equity's Objection and Motion for a Contested Case Proceeding*, 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  
\_\_\_\_\_  
Stephen A. Campbell

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**SERVICE LIST**  
**MPSC Case Nos. U-21090**

<p><b>Administrative Law Judge</b>  Hon. Sally Wallace  Administrative Law Judge  Michigan Public Service Commission  7109 W. Saginaw Hwy., 3rd Floor  Lansing, Michigan 48917  Email: <a href="mailto:Wallaces2@michigan.gov">Wallaces2@michigan.gov</a></p>	<p><b>Counsel for Consumers Energy Company</b>  Ian F. Burgess  Gary A. Gensch Jr.  Bret A. Totoraitis  Theresa A.G. Staley  Robert W. Beach  Michael C. Rampe  Anne M. Uitvlugt  Shaun M. Johnson  Email: <a href="mailto:ian.burgess@cmsenergy.com">ian.burgess@cmsenergy.com</a>  <a href="mailto:gary.genschjr@cmsenergy.com">gary.genschjr@cmsenergy.com</a>  <a href="mailto:bret.totoraitis@cmsenergy.com">bret.totoraitis@cmsenergy.com</a>  <a href="mailto:theresa.staley@cmsenergy.com">theresa.staley@cmsenergy.com</a>  <a href="mailto:robert.beach@cmsenergy.com">robert.beach@cmsenergy.com</a>  <a href="mailto:michael.rampe@cmsenergy.com">michael.rampe@cmsenergy.com</a>  <a href="mailto:anne.uitvlugt@cmsenergy.com">anne.uitvlugt@cmsenergy.com</a>  <a href="mailto:shaun.m.johnson@cmsenergy.com">shaun.m.johnson@cmsenergy.com</a></p>
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