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January 6, 2025

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

Re: **MPSC Case No. U-21806**

Dear Ms. Felice:

Attached for electronic filing in the above-referenced matter, please find the Petition for Leave to Intervene of Energy Michigan, together with the Proof of Service. Thank you for your assistance in this matter.

Very truly yours,

Timothy J. Lundgren

TJL/srd

Enclosure

c. All parties of record.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY for)
authority to increase its rates for the distribution)
of natural gas and for other relief.)
_____)

Case No. U-21806

PETITION FOR LEAVE TO INTERVENE
OF
ENERGY MICHIGAN

Energy Michigan (“Energy Michigan”),¹ by and through its attorneys, Potomac Law Group, PLLC (“PLG”), hereby petitions the Michigan Public Service Commission (“MPSC” or the “Commission”) for leave to intervene (“Petition”) in the above-captioned proceeding pursuant to R792.10410 (Rule 410) of the Commission’s Rules of Practice and Procedure and the Michigan Administrative Procedures Act, MCL § 24.201 *et seq.* In support of its Petition, Energy Michigan states as follows:

1. Energy Michigan is a Michigan nonprofit corporation which was originally formed to protect and promote the interests of producers and users of independent power and now serves as the trade association for participants in the alternative and independent power supply, cogeneration, and advanced energy industries and their customers in Michigan. Its membership includes independent power producers and suppliers, large customers of electricity and gas, project developers, those interested in cogeneration and behind the meter supply, including local units of

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

government, institutions, and private businesses. Its members include customers in the Consumers Energy Company (“Consumers Energy” or “Consumers”) natural gas service territory.

2. Over its history, Energy Michigan has taken, and continues to take, an active interest in utility rate and rate design issues. Energy Michigan has participated in a number of recent Consumers Energy cases setting rates and charges, including several of Consumers’ most recent gas rate cases, U-20322, U-20650, U-21308 and U-21490.

3. On December 16, 2024, Consumers Energy filed its Application (“Application”) with supporting testimony and exhibits, requesting that the Commission authorize Consumers to increase its rates for the distribution of natural gas in an amount of approximately \$248 million, approve a Defined Benefit Pension/Other Post-Employment Benefits Volatility Mechanism and an Uncollectible Deferral/Refund Mechanism, and grant it additional relief as set forth in the Application. Consumers is also providing alternative Cost-of Service Studies pursuant to settlements in U-21308 and U-21490, in which Energy Michigan participated.

4. Under Consumers Energy's proposed changes, the total transportation classes will see a rate increase of 26.9% (see Attachment A to the Application). Energy Michigan members include customers who will be paying these rates if they are approved.

5. Energy Michigan expects to represent the interests of its members by examining the underlying costs and charges presented by Consumers Energy and ensuring that such costs and charges are reasonable, prudent, and cost-based. Energy Michigan reserves the right to take other positions and/or seek other relief based on a review of the Applicant’s and other parties’ filings, the responses to discovery, or positions taken in briefs.

6. Energy Michigan intends to participate in these proceedings to the extent necessary to protect the interests of its members and address the issues as set forth herein. The interests of

Energy Michigan and its members in this proceeding cannot be adequately represented or protected by any other party.

7. This Commission applies a two-prong test for standing as of right, as set forth in *Association of Data Processing Service Organizations, Inc. v Camp*, 397 US 150 (1970) (“*Data Processing*”), which has been applied to utility matters in *Drake v The Detroit Edison Co*, 453 F Supp 1123 (WD Mich 1978). As set forth in *Data Processing* and applied by the Commission, the two-prong test requires a party to show that: (1) it would likely suffer injury in fact (*i.e.*, its interests are endangered or at issue); and (2) its interests that are allegedly endangered are within the zone of interests to be protected or regulated by the statute under consideration. See, *e.g.*, *In re Michigan Consolidated Gas Co*, Case No. U-9138 (November 10, 1988).

8. Energy Michigan meets the “injury in fact” test because some of its members are customers of Consumers Energy whose costs and available programs will be directly affected by the rates and charges approved in this proceeding. These members are within the zone of interest protected by the statutes, under which this rate case has been brought, namely Act 3 of 1939, as modified by Act 341 of 2016.

9. Energy Michigan is therefore entitled to intervene as of right because the issues to be addressed in this proceeding will have a direct and substantial impact upon Energy Michigan and its members and because Energy Michigan meets the Commission’s two-pronged test.

10. Even if Energy Michigan’s members did not satisfy the test for intervention as of right, Energy Michigan should be permitted to intervene under the Commission’s permissive intervention standards. As the Commission has noted,

the Commission’s discretion to grant leave to intervene is broader than the two-prong test. As recognized in prior Commission orders, the requirements for standing before the Commission are not as strict as those applied by the courts. Unlike 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.

In re Michigan Consolidated Gas Co, Case No. U-10150, at 5 (December 8, 1992) (finding that discretionary intervention was appropriate, and “a detailed discussion of the two-prong test is unnecessary”). Furthermore, the Commission has stated that, “[t]he granting of permissive intervention without satisfying the two-pronged test is a long-established Commission practice.”

In re DTE Gas Co, Case No. U-17332, at 4 (May 13, 2014).

11. According to the Commission, “[P]ermissive intervention is appropriate where the intervenor's participation will provide a benefit that outweighs any resulting delay or expense. 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.” *In re the application of DTE Electric Co*, Case No. U-17319 (March 6, 2014) at 10. Furthermore, the Commission has granted permissive intervention in a rate case “to an association that represents the interests of its members, where the members generally meet the zone of interests test.” *Id.*

12. As noted above, Energy Michigan's members meet the zone of interest test, and Energy Michigan, as an association with a long history of involvement in Michigan's utility rate cases, working groups, and legislative processes, brings a unique perspective and is uniquely situated to provide information to this Tribunal and the Commission.

13. Energy Michigan 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 by Consumers or other parties in this proceeding.

14. For these reasons, Energy Michigan asks that it be granted full participation in this proceeding as an intervenor so that it may provide useful expertise and information on a range of applicable issues affecting Consumers' Application.

WHEREFORE, Energy Michigan respectfully requests that the Commission:

- a. Grant Energy Michigan's Petition for Leave to Intervene; and
- b. Grant such other and further relief as is deemed lawful and appropriate.

Respectfully submitted,

Potomac Law Group, PLLC
Attorneys for Energy Michigan

January 6, 2025

By: _____

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