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313 S. Washington Square
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February 20, 2025

Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

RE: In the Matter of the Application of Consumers Energy Company for an Ex Parte
Approval of Certain Amendments to Rate GPD
Case No. U-21859

Dear Ms. Felice:

Attached for filing in the above-referenced matter is the Petition of the Data Center Coalition for Leave to Intervene, Objection to Consumers Energy Company's Request for *Ex Parte* Approval and Request for Contested Case Hearing and Proof of Service of same.

Please note that we have submitted the same to Sally L. Wallace, Chief Administrative Law Judge for the Commission, as an Administrative Law Judge has not yet been assigned to this case.

Sincerely,

FOSTER SWIFT COLLINS & SMITH PC

Michael G. Oliva

MGO:jlk
Enclosures

cc: Nikhil Vijaykar
Lucas Fykes

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of)
Consumers Energy Company for *Ex Parte*) Case No. U-21859
Approval of Certain Amendments to Rate)
GPD)

**PETITION OF
THE DATA CENTER COALITION
FOR LEAVE TO INTERVENE,
OBJECTION TO CONSUMERS ENERGY COMPANY'S
REQUEST FOR *EX PARTE* APPROVAL
AND REQUEST FOR CONTESTED CASE HEARING**

The Data Center Coalition (DCC), by and through its attorneys, Keyes & Fox, LLP and Foster Swift Collins & Smith PC, hereby submits this petition with the Michigan Public Service Commission seeking leave to intervene and become a party to the above-captioned proceeding pursuant to R 792.10410 (Rule 410) of the Commission's Rules of Practice and Procedure. DCC also hereby objects to Consumers Energy Company's (Consumers or the Company) request for *ex parte* approval of its application and requested relief in this proceeding. DCC requests that the Commission schedule a contested case hearing in this case. In support of this petition, objection and request, DCC states as follows:

PETITION FOR LEAVE TO INTERVENE

1. DCC is a voluntary membership association of the data center industry, representing 35 leading data center owners and operators, as well as companies that lease large amounts of data center capacity, including customers of Consumers and those with business

interests in the Company's service territory.¹ The purpose of the DCC is to represent and advance the interests of the data center community through public policy advocacy, thought leadership, stakeholder outreach, and community engagement.

2. DCC has not previously participated in a proceeding before this Commission, but has experience participating in regulatory proceedings in Virginia, Illinois, Ohio, Oregon, Indiana and Arizona.

3. Consumers filed an application for authority to amend its General Primary Demand Rate (Rate GPD) and to implement new contract terms that would apply only to new data center customers, and not to other similarly situated customers. Consumers' Rate GPD amendments would impose on data center customers a \$100,000 upfront administrative fee, a fifteen-year minimum contract term, a monthly Minimum Billing Demand charge equal to 80% of the customer's Contract Capacity, and exit fees for early contract termination, among other provisions.²

4. DCC and its members have multiple direct and substantial interests in the issues raised by the Company's application. DCC's members include customers of Consumers Energy and companies which are interested in constructing new data center facilities in the Company's service territory. Several of the Company's proposals will impact the economics of data center operations in the Company's service territory, including proposed contract term, minimum demand charge, exit and administrative fees, and financial security requirements. Those proposed changes would increase the cost of electric service to new data centers compared to the existing terms of

¹ DCC's members are Aligned Adaptive Data Centers, AWS, Clayco, Cloud HQ, Cologix, Compass Data Centers, Corescale Data Centers, CoreSite, CyrusOne, Databank, Digital Realty, Edge Connex, Edge Core Digital Infrastructure, Equinix, Google, Iron Mountain Data Centers, Meta, Microsoft, NTT Data, Oppidian Connect, Oracle, Prime Data Centers, Powerhouse Data Centers, Prologis, QTS, Rowan Digital Infrastructure, Sabey Data Centers, Skybox Data Centers, Stack Infrastructure, Stream Data Centers, Switch, T5 Data Centers, TA Realty, Vantage Data Centers, Visa, and Yondr.

² See Application at 3-6.

Rate GPD. An order approving those proposals or approving those proposals with modifications will impact DCC's members' ability to do business in the Company's service territory.³

5. Commission rules and precedent provide that organizations may be granted intervention to advocate for the interests of the members they represent.⁴ To establish standing to intervene in a Commission proceeding, an organization can assert and represent the interests of its members without specifically identifying each individual member whose interests are to be represented.⁵

6. The Commission recognizes at least two bases for standing to intervene in a proceeding. The first is standing as of right, which requires (1) that the petitioner will suffer an injury-in-fact because of the outcome of the case, and (2) that the petitioner's interests that are allegedly endangered are within the zone of interests to be protected or regulated by the statute.⁶ The second is permissive intervention. DCC and its members satisfy the requirements for both types of intervention.

7. DCC and its members satisfy the first prong of the test for intervention as a matter of right on two grounds.

8. First, DCC's members include current and prospective customers of Consumers. The Company's Application and supporting Testimony specifically notes that Consumers has

³ Michigan, or at least Consumers' service territory, would also risk losing a valuable commercial asset that the state has been working to attract. See Zachary Skidmore, *Michigan legislature finalizes bill extending tax breaks for data centers*, <https://www.datacenterdynamics.com/en/news/michigan-legislature-finalizes-bill-extending-tax-breaks-for-data-centers/> (Jan. 9, 2025).

⁴ See, e.g. *In re Application of the Detroit Edison Co. for Authority to Increase its Rates*, MPSC Case Nos. 15768 and U-15751 (Jan. 11, 2010) at 8; see also *Drake v. Detroit Edison Co.*, 453 F. Supp. 1123, 1129 (W.D. Mich. 1978) (noting that a "plaintiff may be granted standing when he asserts interest not of his own but of a third party that meets the zone of interests test.")

⁵ See, e.g. *In re Application of the Detroit Edison Co. for Authority to Increase its Rates*, MPSC Case Nos. 15768 and U-15751 (Jan. 11, 2010) at 8.

⁶ See *Association of Data Processing Service Organizations Inc., v. Camp*, 397 U.S. 150 (1970); *Drake v. The Detroit Edison Co.*, 453 F. Supp. 1123 (W.D. Mich. 1978) (applying the *Association of Data Processing* test to utility matters).

multiple pending data center requests in its pipeline. DCC's members therefore stand to experience direct financial harm from the Company's proposed amendments to Rate GPD. That is because DCC members' ability to make economically viable investments in Michigan will be impacted by the discriminatory and onerous terms and conditions the Company proposes to impose on data center customers, including increased minimum demand charges, a 15-year minimum contract period, and stringent financial security and exit fee requirements, for example.

9. Second, adverse impacts on DCC's members would injure DCC's mission of advocacy for its members and its ability to promote the economic and community-building impacts of the data center industry.⁷

10. DCC also satisfies the second, "zone of interests" prong of the test for intervention as a matter of right. "The zone of interests test does not present a difficult barrier for litigants to negotiate insofar it must only be shown that the asserted interests are arguably within the zone of interests to be protected."⁸ Here, DCC's members' interests are well within the zone of interests protected by MCL 460.1 *et seq.* These statutes protect utility customers and provide opportunities for advocacy by groups to protect their interests in Commission proceedings. Specifically, the law seeks to ensure that customers receive electric service on just and reasonable and non-discriminatory terms.⁹

11. Having demonstrated that its interests satisfy the two-prong test for standing as a matter of right, DCC respectfully submits that it is entitled to intervene in this case as a matter of right.

⁷ Data Center Coalition, *About DCC*, <https://dcc.silkstart.com/about> (Last visited Feb. 14, 2025).

⁸ *Drake*, 453 F. Supp. 1123, 1129 (W. D. Mich. 1978).

⁹ *See* MCL 460.557.

12. Even if the Commission denies DCC standing as a matter of right, the Commission should allow DCC to intervene in this proceeding under the Commission's second recognized type of intervention, which is permissive intervention. The two-pronged test for intervention by right does not apply when granting permissive intervention,¹⁰ and the Commission's authority for granting permissive intervention is much broader than its authority to grant intervention as a matter of right. As an administrative agency, the Commission may allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor's participation.¹¹

13. DCC observes here that because this matter does not yet have a procedural schedule—notwithstanding the Company's request for expedited *ex parte* review—DCC's intervention cannot delay the proceeding.

14. The Commission has held that permissive intervention is proper when a prospective intervenor could bring helpful information that might not otherwise be available to the attention of the Commission.¹² Permissive intervention has also been granted in proceedings that raise novel questions and important policy issues, and a prospective intervenor can bring a unique perspective to the proceeding.¹³

15. As noted above, DCC is *the* member organization for data center operators nationally and globally. DCC's combination of advocacy, stakeholder outreach and community engagement—*informed by the knowledge and experience of its members*—position it as eminently capable of providing a unique perspective to this proceeding addressing novel policy issues. Similarly, DCC's knowledge and experience will likely enable it to provide the Commission with information that might not otherwise be available to it. Moreover, in recent years, DCC has been granted leave to

¹⁰ See *In re DTE Gas Co.*, MPSC Case No. U-17332 at 4 (May 13, 2014).

¹¹ *In re the Application of DTE Electric Co.*, Case No. U-17319, p. 10 (March 6, 2014).

¹² *In re International Transmission Co.*, MPSC Case No. U-16200, p. 4 (Oct. 14, 2010).

¹³ See, e.g., *In re DTE Electric Co.*, MPSC Case No. U-17319, p. 10 (Mar. 6, 2014).

intervene as a party and participated in several regulatory proceedings across the country addressing terms and conditions that enable load growth from data center customers while mitigating risk to non-data center customers, including recent proceedings before the utility regulatory commissions in Ohio, Indiana and Oregon in cases comparable to the instant case, where the utilities sought approval for prospective changes in the rates, conditions and terms of service for new data center customers.¹⁴ Its experience working with utilities, non-utility stakeholders, and regulators in those proceedings will help inform its participation in this proceeding.

16. DCC should thus be granted intervention in this case because it, and its members, stand to be directly harmed by the Company's proposals, and because DCC can bring a unique perspective to the Commission's resolution of novel policy issues.

17. DCC contends that Consumers' proposals should be more carefully scrutinized and revised as necessary to prevent discriminatory imposition of unjust and unreasonable economic harm on a specific type of business. DCC disputes the Company's contention that data center-specific terms and conditions are necessary to address the issues it raises in its Application, and does not agree with Consumers' unsubstantiated claims with respect to the jobs associated with data centers.¹⁵

18. DCC reserves the right to take different positions if, and when, this case proceeds to full hearings and DCC can review filed testimony and responses to discovery, as may be relevant

¹⁴ *Re Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers*, Public Utilities Commission of Ohio, Case No. 24-0508-EL-ATA; *Re Verified Petition of Indiana Michigan Power Company for Approval of Modifications to its Industrial Power Tariff – Tariff I.P.*, Indiana Utility Regulatory Commission, Cause No. 46097; *Re PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Oregon Public Utility Commission Docket No. UE 433.

¹⁵ See "Economic Contributions of Data Centers in the United States, 2017-2023", PwC (Feb. 2025), available at: <https://www.centerofyourdigitalworld.org/2025-impact-study> (discussing state-specific jobs and economic contributions of data centers).

and appropriate. DCC further reserves the right to take other positions and/or seek other relief based on any further proposals that may be submitted by other parties in this case.

19. The relief that DCC seeks in this proceeding is an order denying Consumers' proposed GPD Rate term amendments, at least until such time as all interested parties have been afforded the opportunity to examine the amendments, conduct discovery, and otherwise assess the impact of Consumers' proposals.

20. DCC's interests, as set forth above, are not adequately represented by the present parties (to date, there are no parties to this proceeding other than the Company) and, therefore, it would be detrimental to the public interest to deny this Petition to Intervene.

21. Because the issues set forth above are of great significance to DCC, its member organizations, and the public, a denial of this Petition would result in a miscarriage of justice.

**OBJECTION TO REQUEST FOR EX PARTE APPROVAL AND REQUEST FOR
CONTESTED CASE PROCEEDINGS**

22. Consumers requests expeditious *ex parte* approval of its application, citing MCL 460.6a(1). Consumers asserts that because the proposed amendments to Rate GPD will not increase any existing rates or the cost of service to other customers, the Commission may approve the proposed Rate GPD amendments *ex parte* as authorized by MCL 460.6a(1).¹⁶

23. Nothing in MCL 460.6a(1) authorizes *ex parte* approval of the Company's application; to the contrary, *ex parte* approval of the application would be unlawful.

24. MCL 460.6a(3) permits the authorization and approval of an alteration or amendments in rates or rate schedules, without notice or hearing, only where such alteration or amendment will not result in an increase in the cost of service to its customers.

¹⁶ Application at 6.

25. Here, however, the Company's proposed changes to Rate GPD *will* result in an increase in the cost of service to its customers, as explained below. Therefore, MCL 460.6a(1) requires both notice to all interested parties in the Company's service area as well as a reasonable opportunity for a full and complete hearing.¹⁷

26. Even if Consumers' Rate GPD proposals would not change existing rates, those proposals *will* nevertheless increase the costs borne and charges and fees paid by data center customers by changing the tariff's terms and conditions. For example, even if Consumers is not proposing to change its demand rates, if its proposals are approved, data center customers will be required to pay an 80% "floor" level of demand charges, even if the customer's actual demand is below that floor, which is significantly more onerous than existing obligations under the Company's tariffs. As another example, even if Consumers is not proposing to change its demand rates, if its proposals are approved, data center customers will be required to enter into a minimum contract term of 15 years (and pay applicable rates and minimum charges during that time), which is significantly longer than existing obligations under the Company's tariffs. These terms, and others such as the Company's proposed exit fees (which leave the customer no economic reason, and therefore, flexibility, to terminate a contract early for any reason) and financial security requirements, will increase operational costs for data centers. Those impacts warrant rigorous evaluation through a full proceeding in order to determine whether the Company's proposals are just and reasonable and otherwise meet the requirements of Michigan law.

27. Moreover, under Michigan law, when evidence, including testimony, is offered, parties shall have the right of cross-examination and shall have the right to submit rebuttal evidence.¹⁸ Additionally, a witness that submits written testimony in any proceeding shall be made

¹⁷ MCL 460.6a(1).

¹⁸ R. 792.10427(3).

personally available for cross-examination, or the testimony shall not be received in evidence, absent waiver by the parties.¹⁹ Here, because Consumers has filed witness Connolly's direct testimony it is obligated to make witness Connolly available for cross-examination in a hearing.

28. Even if the Commission finds, for any reason, that the statute does not require a contested case proceeding, Rule 415(1) of the Commission's Rules of Practice and Procedure, R. 792.10415(1) provides that a contested case proceeding may be held when the commission so directs. Here, a contested case proceeding is warranted because Consumers' proposed amendments are motivated by the "unprecedented volume of requests and potential load growth" of the data center industry,²⁰ making this is a novel public policy issue worthy of a contested proceeding.

29. If the Commission were to set this matter for a contested case proceeding, DCC would expect to conduct discovery and develop its positions on each of the Company's proposals through expert witness testimony. Without waiving its rights to take different positions if this case proceeds to hearing, DCC would anticipate opposing Consumers' discriminatory proposal to apply Rate GPD amendments *only* to data center customers (as opposed to other similarly sized customers); addressing the Company's proposed 15-year contract term and 80% minimum demand charge; and recommending that the Company more transparently spell out the details of its financial security and capacity reduction proposals.

30. DCC therefore respectfully requests that it be given an opportunity to conduct discovery, to cross-examine witnesses, to present witnesses on its behalf, if necessary, and to generally advocate its positions with respect to all issues presented by Consumers' application. Because the issues set forth in Consumers' application are of great significance to DCC, its

¹⁹ See R. 792.10430(3).

²⁰ Connolly Direct at 4.

members, and to the public, it would be unfair and prejudicial if the Commission were to grant Consumers' requested relief without setting this matter for a contested case proceeding.

Dated: February 20, 2025

DATA CENTER COALITION

By:

Michael G. Oliva
One of Its Attorneys

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of)
Consumers Energy Company for Ex Parte)
Approval of Certain Amendments to Rate)
GPD)

Case No. U-21859

AFFIDAVIT OF LUCAS FYKES

- 1. I am Lucas Fykes. I am the Director, Energy Policy of The Data Center Coalition. My office is located at 525-K East Market Street #253, Leesburg, VA 20176.
2. I have personal knowledge of the allegations in The Data Center Coalition's Petition for Leave to Intervene, Objection to Consumers Energy Company's Request for Ex Parte Approval and Request for Contested Case Hearing in this case.
3. The allegations in this petition are true to the best of my knowledge, information and belief.

[Handwritten signature of Lucas Fykes]

LUCAS FYKES

STATE OF KENTUCKY)
COUNTY OF ALLEN)

SS

Signed and sworn before me

This 20th day of February, 2025

[Handwritten signature of Notary Public]

Notary Public, State of Kentucky, County of Allen

My Commission expires 9-30-2027



STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY for)
 Ex Parte Approval of Certain Amendments to) Case No. U-21859
 Rate GPD.)
 _____)

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
 COUNTY OF INGHAM)

Jennifer Knox, being duly sworn, deposes and states that on February 20, 2025, she served a copy of **the Petition of the Data Center Coalition for Leave to Intervene, Objection to Consumers Energy Company’s Request for Ex Parte Approval and Request for Contested Case Hearing** on the following:

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