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February 20, 2025

VIA ELECTRONIC CASE FILING

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

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

Dear Executive Secretary:

Enclosed for filing please find the *Association of Businesses Advocating Tariff Equity's Petition to Intervene 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

SAC/lkd

cc w/enc.: Parties of Record

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)	Case No. U-21859
to Rate GPD.)	
_____)	

**PETITION TO INTERVENE 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 petitions the Michigan Public Service Commission (“Commission”) for leave to intervene in the captioned proceeding pursuant to Mich. Admin Code, R 792.10410 (“Rule 410”) of the Commission’s Rules of Practice and Procedure and moves the Commission to reject Consumers Energy Company (“Consumers” or the “Company”)’s request for ex parte approval of certain revisions to the Company’s Rate GPD 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, approve the Company’s proposed “Data Center Provision” additions to Rate GPD as a separate, standalone data center rate with the modifications described below. In support of this petition and motion, 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 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: Cleveland Cliffs, Cargill, Inc., Charles River Laboratories, Corning, Inc., Edward C. Levy Co., Enbridge Energy, Limited Partnership, Ervin Industries Inc., Stellantis, Gerdau MacSteel INC., General Motors LLC, Graphic Packaging International, Inc., Hemlock Semiconductor Operations LLC, J. Rettenmaier USA LP, Marathon Petroleum Company LP, Martin Marietta Magnesia Specialties LLC, Metal Technologies, Inc., Occidental Chemical Corporation, Pfizer Inc., The Dow Chemical Company, Linde, Inc., 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 Energy Company ("Consumers" or "Company")'s Application, including its request to revise and add substantial load to the Company's Rate GPD, on which multiple ABATE members take service.

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.¹ 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.²

6. ABATE meets the two-prong test for standing because, as customers of the Company, and particularly as customers taking service on Rate GPD, ABATE members have a direct financial interest in the amount, rates, terms, 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 and adverse impact on the rates that ABATE members pay and the service they receive. ABATE's interest in the adoption of reasonable and prudent utility rates and tariffs 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 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."³ Permissive intervention has

¹ 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.

² *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).

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

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.⁴

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 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.”⁵ As such, ABATE meets the test for permissive intervention.

9. ABATE will carefully examine the reasonableness and prudence of the Company’s requests and proposals, including those indicated above.

10. ABATE will take the position that the Company’s Application, including but not limited to the proposals described above, should be carefully scrutinized and any unjustified, unsubstantiated, imprudent, unreasonable, or unlawful deficiencies, costs, proposals, or mechanisms should be disallowed.

11. Specifically, the Commission should reject the Company’s requested ex parte approval of revisions to Rate GPD to permit data centers, described by the Company’s Application as “often massive, energy intense facilities” to take service on that rate.

⁴ *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.

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

12. The incongruity between the Company's requested use of Rate GPD for these customers and the current customer profile for that rate is extreme. While the Application claims that "Rate GPD is the most competitive rate available to this type of load," it also explicitly acknowledges that "new large scale data centers are different than other Rate GPD customers" and are "unique in that they are extremely large loads but bring more risk than other Rate GPD customers."

13. For instance, as explained in the Application, "[c]urrently the Company's largest Rate GPD customer is around 28 MW in size," while "[i]n contrast, some of the data centers inquiring into obtaining service from Consumers Energy are quoting loads greater than 1,000 MW." The Company claims it "has seen an influx in requests to serve new data center load over the last 12 months and expects this trend to continue" and "has data center inquiries that total over 15 gigawatts of electric load in the economic development pipeline."

14. According to its Application, the Company also "believes that data centers are more inclined to reduce or eliminate electric loads than traditional Rate GPD customers" and "unlike traditional manufacturing customers who take service under Rate GPD, data centers do not have significant numbers of on-site employees, do not have significant local supply chain needs, making it easier for data centers to 'pick up shop' and reduce or leave the Company's service." They also "do not create significant commercial activity associated with housing and residential growth, in contrast to large manufacturing customers," which "factors create a greater risk for stranded assets with respect to data centers than exists for other Rate GPD customers."

15. Indeed, the Application acknowledges the need to "designate customers as data centers so that the customers' load shape can be better analyzed."

16. Consumers' proposal to service this load on Rate GPD should therefore not be approved. While Consumers has indicated that it *expects* to use the load data it collects to analyze putting data centers in their own cost of service column and develop a rate specific to data centers, it has not made a firm commitment to move the large data center load to its own rate in the future, as is most appropriate.

17. As noted above, Consumers has gone to great lengths to describe why large data center customers are different than its existing Rate GPD customers. Given those differences, large data center loads should be placed on their own rate from the outset to minimize the risk of existing Rate GPD customers paying intra-class cost subsidies to data center customers or being inappropriately subject to any of the additional terms and conditions that apply to large data center customers. That separate rate for large data center loads can include the special terms and conditions applicable to large data centers, but otherwise initially mimic the current rates, terms, and conditions for Rate GPD and be limited in eligibility to large data center loads.

18. Beyond this dissonance between the current customers taking service on Rate GPD and the proposal to have "data center" customers take load on that rate, the Application's request that the Commission approve the Rate GPD revision on an *ex parte* basis, based on a claim that "[a]pproval of the proposed amendments will not increase any existing rates or the cost of service to other customers," is unreasonable.

19. 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 requests that the Commission approve revisions to Rate GPD which will increase load

taking service on that rate by, according to the Company, as much as 15 GW, with uncertain cost and revenue impacts for the Company and its customers.

20. For perspective, the current peak load demand on Consumers' system is approximately 7 GW, meaning to accommodate even a portion of the claimed prospective data center load Consumers would be required to significantly expand (indeed, more than double) its resource portfolio with new Power Purchase Agreements ("PPAs") and/or generation resource investments. In addition, significant transmission investments by Michigan Electric Transmission Company ("METC") beyond those funded by facilities charges paid by the new data center load would also likely be necessary to accommodate the size of this prospective data center load and the resource additions necessary to serve the same.

21. In other words, the issues presented by the large data center electric service requests described by the Application are extraordinary and unprecedented. This additional load would require large new resource portfolio commitments by the utility for 15 years or longer as well as potentially large transmission investments beyond those funded by the facility charges paid by the data center customers. The larger the magnitude of these incremental cost commitments that must be made to serve the additional load, the less the contribution that will be made by these customers toward the utility's sunk legacy costs, and the less other customers will benefit from the addition of the data center customers.

22. The Company's Application acknowledges these risks, noting that there are greater risks associated with the load of these customers, versus that of other customers, materializing at the contracted level of demand and sustaining operations at that level once that load materializes given data center customers' ability to "pick up shop" and reduce or stop taking service from the utility. This creates a high risk of the incremental cost commitments incurred to serve these

customers becoming stranded such that either Consumers or its other customers must shoulder them.

23. This load also presents unique and significant cost subsidy considerations. For instance, if a particular proposed data center load requires large transmission investments beyond those covered by the facility charges it would pay, it is possible Consumers' incremental cost to serve that new data center load could exceed Consumers' average embedded cost to serve that load, leading to other customers inappropriately subsidizing that proposed data center load if it is served under an average embedded cost of service rate.

24. Thus, at a minimum, Consumers' proposed annual reporting should be expanded to verify Consumers' incremental cost to provide service remains below its average embedded cost of service. In addition, to the extent any transmission investments not covered by facility charges are required for a particular large data center load, Consumers should be required to verify that Consumers' cost of those transmission investments through MISO transmission charges does not cause Consumers' incremental cost to serve that large data center load to exceed Consumers' average embedded cost to serve that large data center load.

25. In addition, to further ensure Consumers does not enter into a contract with any large data center load customer based on an average embedded cost of service rate where the incremental cost to serve that customer will exceed the average embedded cost to serve, Consumers should be required to file each proposed large data center load contract with the Commission, at least on an *ex parte* basis, and demonstrate in that filing that Consumers' incremental cost to serve that new customer is less than Consumers' average embedded cost to serve it. Consumers should not be permitted to execute a contract to serve a new data center load

of 100 MW or larger at a single site, or at aggregated multiple sites, until the Commission has approved an initial rate for such loads in this proceeding.

26. Furthermore, it is unclear whether the Company's proposed minimum initial term of 15 years is sufficient to safeguard its additional customers and avoid a stranded cost associated with the investment to serve these data center customers. Consumers has indicated its self-built assets typically have a depreciable life of 30 years or more and its PPAs typically have a term of 15 to 25 years. Given the large resource addition sizes likely needed to serve large data center load, Consumers needs sufficient advance notice of termination of full-service by large data center customers at the end of their contracts to allow Consumers to reflect that termination of full-service and the capacity freed up in Consumers' resource planning. Specifically, large data center load customers should be subject to a 5-year evergreen provision under which the term of each customer's full-service contract will be automatically extended at its end by an additional five years unless the customer provides a written notice of termination of the full-service agreement to Consumers at least five years prior to the current contract term end date.

27. The Company's proposed discretion to reduce or increase data center customers' contract capacity is also concerning. Given the large size of the resource additions that will likely be needed to serve large data center load, Consumers should be required to at least make an *ex parte* filing with the Commission requesting approval of the proposed reduction or increase. Specifically, regarding a reduction in contract capacity, this filing should demonstrate why the reduction will not result in a stranded asset related to the investment made to serve the customer's original contract capacity request, or otherwise cause costs to be shifted to other customers. Regarding an increase in a data center customer's contract capacity, if a proposed increase is 5% or more above the original contract capacity amount for the large data center (or 5% or more above

the last contract capacity amount reviewed and approved by the Commission in the case where such review and approval of a contract capacity increase has previously occurred), Consumers should be required to at least make an *ex parte* filing with the Commission requesting approval of the proposed increase in which it must demonstrate it is reasonable and will not cause disruptions on the Company's system and negatively impact service for other customers, which risk was noted in the Company's Application.

28. Further, Consumers' proposed \$100,000 per customer cap on the administrative fee to process requests from prospective large data center load customers does not provide sufficient protection with respect to Consumers' reasonably applying the charge to prospective customers. To address this concern, Consumers should be required to provide a written estimate of the fee to the prospective customer in advance of undertaking any work regarding the request and not be permitted to exceed that written estimate without written approval from the prospective customer of a revised estimate of the fee.

29. In short, the Company's Application does not meet the statutory requirements for *ex parte* approval given the significant cost implications raised by the proposed revisions to Rate GPD and the terms for serving data center load. As such *ex parte* approval is not reasonable, prudent, or appropriate here.⁶

30. As such, the Commission should reject the Company's request for *ex parte* approval of the Application and instead schedule this matter for a contested case proceeding or,

⁶ 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").

alternatively, only approve the Company's proposed "Data Center Provision" and further additions to Rate GPD as a separate, standalone rate with the modifications summarized below:

- Consumers should be required to do the following to ensure it does not enter a contract with a large data center load customer for full-service under an average embedded cost of service rate where Consumers' incremental cost to provide the service exceeds Consumers' average embedded cost to provide the service:
 - In its proposed annual reporting to the Commission Consumers should demonstrate its expected incremental cost to provide power supply and delivery service to new large data center loads continues to be less than its expected average embedded cost of providing that service.
 - If transmission investments beyond those covered by facility charges are required to accommodate a new large data center load customer, Consumers should verify that Consumers' incurred cost for those investments through higher MISO transmission charges will not cause the incremental cost to serve the new large data center customer to exceed Consumers' average embedded cost to serve that customer.
 - Consumers should be required to, at least on an *ex parte* basis, file an application with the Commission for approval of each proposed large data center load contract and demonstrate in that filing that Consumers' incremental cost to serve that new customer is less than Consumers' average embedded cost to serve it.
- Rather than placing new large data center loads on Rate GPD subject to additional terms and conditions as Consumers has proposed in its Application, to avoid potential intra-class subsidies between existing Rate GPD customers and new large data center loads, Consumers should instead be required from the outset to establish a new rate for new large data center load using the Rate GPD rates, terms, and conditions as an initial starting point for the rate, as well as the additional terms and conditions applicable to new large data center loads.
- Given the large size of the resource additions that will likely be needed to serve large data center loads and the depreciation or contract term of those resources often exceeding 15 years, as a minimum Consumers should be required to include in its large data center full-service contracts a five year evergreen provision under which the term of each customer's full-service contract will be automatically extended at its end by an additional five years unless the customer provides a written notice of termination of the full-service agreement to Consumers at least five years prior to the current contract term end date. This would permit Consumers to reflect such full-service contract terminations and the freed-up capacity they would provide in its resource planning.
- Given the large size of the resource additions that will likely be needed to serve large data center loads, Consumers should be required, at least on an *ex parte* basis, to file with the Commission an application for approval of any proposed reduction or increase in contract capacity for a large data center customer.

- Regarding a proposed reduction in contract capacity, this filing should demonstrate that the reduction will not result in a stranded asset related to the investment made to serve the customer's original contract capacity request, or otherwise cause costs to be shifted to other customers.
- Regarding a proposed increase in a data center customer's contract capacity, if a proposed increase is 5% or more above the original contract capacity amount for the large data center (or 5% or more above the last contract capacity amount reviewed and approved by the Commission in the case where such review and approval of a contract capacity increase has previously occurred), Consumers should be required to at least make an *ex parte* filing with the Commission requesting approval of the proposed increase in which it must demonstrate it is reasonable and will not cause disruptions on the Company's system and negatively impact service for other customers.
- Consumers should be required to provide a written estimate of the project proposal fee applicable to prospective large data center customers to each prospective customer in advance of undertaking any work regarding the customer's electric service request. Consumers should not be permitted to exceed that written estimate without written approval from the prospective customer of a revised estimate of the fee.

31. 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.

32. 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 and motion for a contested case proceeding.

33. 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 the Commission grant ABATE’s Petition to Intervene and Motion for a Contested Case Proceeding and requests that the Commission reject the Company’s request for ex parte approval of the Application and instead schedule this matter for 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, approve the Company’s proposed “Data Center Provision” addition to Rate GPD as a separate, standalone rate with the modifications described above.

Respectfully submitted,

CLARK HILL PLC

By: _____

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STATE OF MICHIGAN

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CONSUMERS ENERGY COMPANY)	
for Ex Parte Approval of Certain Amendments)	Case No. U-21859
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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

Stephen A. Campbell, being first duly sworn, deposes and says that on February 20, 2025 he did cause to be served the *Association of Businesses Advocating Tariff Equity's Petition to Intervene 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

SERVICE LIST
MPSC Case Nos. U-21859

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