



March 7, 2025

Ms. Lisa Felice
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48909

Via E-File

RE: MPSC Case No. U-21859

Dear Ms. Felice:

Attached please find the enclosed documents for filing:

- Petition to Intervene by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan;
- Motion for Contested Case by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan;
- Appearance of Christopher M. Bzdok on behalf of Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan; and
- Proof of Service.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me.

Sincerely,

Christopher M. Bzdok
chris@tropospherelegal.com

CC: Parties to Case No. U-21859

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

**THE MICHIGAN ENVIRONMENTAL COUNCIL, NATURAL RESOURCES DEFENSE
COUNCIL, SIERRA CLUB, AND CITIZENS UTILITY BOARD OF MICHIGAN'S
PETITION TO INTERVENE
AND MOTION FOR A CONTESTED CASE PROCEEDING**

The Michigan Environmental Council (“MEC”), Natural Resources Defense Council (“NRDC”), Sierra Club, and Citizens Utility Board of Michigan (“CUB”) (collectively, “MNSC”) petition the Michigan Public Service Commission (the “Commission”) for leave to intervene in the captioned proceeding. MNSC also hereby requests the Commission to deny *ex parte* approval of Consumers Energy Company’s (“Consumers”) application for amendments to Rate GPD (the “Application”) and initiate a contested case proceeding.

MNSC’s Petition for Leave to Intervene

1. MNSC seeks to intervene in this case to represent the interests of its members in receiving affordable power that is generated and supplied in a reliable and environmentally sound manner.
2. MEC is a statewide environmental organization with 100 member groups and a collective membership of over 300,000 people. These individuals live, use electricity, and pay electric bills in Michigan, and thousands of them are within Consumers’ service territory.
3. NRDC is a national, non-profit environmental organization with over 30 years of experience working on state energy policy, including utility regulation and energy efficiency.

NRDC has over 12,300 members who live, use electricity, and pay electric bills in Michigan, and over 4,800 members who are within Consumers' service territory.

4. The Sierra Club, a national, non-profit organization, has approximately 620,000 members, nationwide, dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club has many years of experience working on energy and electric generation issues throughout the United States, including in Michigan. Sierra Club has approximately 17,000 members in Michigan, over 8,700 of whom live, work, and pay electric bills in Consumers' service territory.

5. CUB is a Michigan nonprofit corporation organized to protect Michigan's residential ratepayers from unreasonable and unnecessary utility rate increases. CUB has members that live, use electricity, and pay electric bills in Consumers service territory.

6. Many of MNSC's members have a particular interest in renewable energy.

7. MNSC's members are directly affected by the rates, policies, terms, and conditions governing Consumers' provision of electricity, and these members have a strong interest in having their electricity provided in a dependable and environmentally responsible manner, and at costs that are competitive and relatively stable over the long term. Collectively and individually, these members also have a strong interest in avoiding economic harm caused by unreasonable or imprudent utility practices. These members have the potential to be harmed if they were required to incur higher costs and encounter environmental harm caused by imprudent utility practices.

8. The Michigan Public Service Commission recognizes two types of intervention.

- a. First, intervention by right, which requires that the party will suffer an injury-in-fact as a result of the outcome of the case, and that the party is within the zone of interest protected by the statute. See for example, *Association of Data Processing Service Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 250 L Ed 184 (1970).
- b. Second, permissive intervention, where the Commission has the discretion to permit a party to intervene in the case where that party can provide useful information to the Commission or a unique perspective on the issues in the case. *In re Application of The Detroit Edison Co for Authority to Increase its Rates*, Case Nos. U-15768 and U-15751, Order, January 11, 2010, p. 7 (“*In re Detroit Edison*”).

9. MNSC meets both tests.

10. MNSC’s members who live and work within Consumers’ service territory will suffer an injury-in-fact if the result of this proceeding is a decision that results in higher electric bills for non-data center customers and environmental harm.

11. MNSC’s members are within the zone of interests protected by MCL 460.1, *et seq.* These statutes generally protect ratepayers and provide opportunities for advocacy by ratepayer groups to protect their interests in Commission proceedings.

12. MNSC meets organizational standing because its members meet the zone of interests test. Commission rules and precedent provide that an association may be granted intervention to represent the interests of its members. See *In re Detroit Edison* at 8 (citing MPSC Rules of Practice and Procedure, Mich Admin Code R 460.17101(f), (g)(vii), and R 460.17201); see also *Drake v Detroit Edison*, 453 F Supp 1123, 1129 (WD Mich 1978) (noting that “a plaintiff

may be granted standing when he asserts interests not of his own but of a third party that meet the zone of interests test.”). To establish standing to intervene in a Commission proceeding, an association can assert and represent the interests of its third-party members without specifically identifying each individual member whose interests are to be represented. *In re Detroit Edison* at 8.

13. MNSC meets both prongs of the *Data Processing* test because a significant number of its members are Consumers customers, because this case directly implicates these members’ cost of electricity, and because these members are well within the zone of interests protected by MCL 460.1 *et seq.*

14. MNSC also meets the test for permissive intervention, because it will provide useful information to the Commission and a unique perspective on the issues presented for its review in this proceeding.

15. MNSC will bring significant expertise to bear in these proceedings. MEC, NRDC, Sierra Club, and CUB’s staff and witnesses have extensive knowledge and experience in the areas of environmental, energy, and ratepayer advocacy. In addition, MEC, NRDC, Sierra Club, and CUB have each intervened and participated in numerous cases before the Commission to advocate for these issues, both individually and in coalition with other environmental organizations.

16. MEC, NRDC, Sierra Club, and CUB have also worked for years to advance policies through the legislative process that would benefit the public and the environment in these areas.

17. If permitted by the Commission, MNSC plans to evaluate the Application, along with any testimony and exhibits, and to conduct discovery, and then to raise those issues and take

those positions that best serve the interests described above. MNSC reserves the right to advance other issues as the case develops.

18. No other party adequately represents the interests of MNSC and their members.

MNSC's Motion for a Contested Case Proceeding

19. MNSC opposes *ex parte* approval of Consumers' proposed modifications to Rate GPD and request the Commission to initiate a contested case proceeding. A contested case proceeding is necessary to fully evaluate Consumers' proposal and to ensure that the tariff provisions for data centers sufficiently protect Consumers and its existing customers.

20. Consumers has stated that it has over 15 gigawatts (GWs) of prospective data center load in its economic development pipeline.¹ This alone is roughly twice as much load as Consumers' current peak load of 7.6 GW.² In order to serve this load, Consumers would need to "make significant investments in capacity, energy, and distribution," including the construction of certain assets with a depreciation schedule of 30 years or greater.³

21. Consumers has also accurately noted that "data center customers are unique in that they are extremely large loads but bring more risk than other Rate GPD customers," including "a greater risk for stranded assets with respect to data center customers than exists for other Rate GPD customers."⁴ In its Answer to the other proposed intervenors' motions for a contested hearing, Consumers recognized "that the issues presented by the large data center requests are extraordinary

¹ Direct Testimony of Laura M. Connolly at 4:7-8 ("Connolly Testimony").

² Case No. U-21585, Consumers' Ex. A-15, Schedule E-4, May 31, 2024 (identifying Consumers' system peak demand for 2025 as 7,637 MW).

³ Connolly Testimony at 6:2-6.

⁴ Application at ¶ 3.

and unprecedented.”⁵ Consumers’ witness Laura M. Connolly emphasized the importance of ensuring that tariff provisions for data centers “protect other customers from stranded assets and increased costs should the data center load not materialize after resources are committed to serve them or the load is not in place for as long as expected.”⁶

22. Because the projected new load from data centers carries unprecedented risks and costs, it is all the more important that appropriate and fully protective tariff terms are put in place before Consumers enters into long-term contracts with data center customers.

23. Consumers has not demonstrated that its proposed tariff revisions will protect non-data center customers from cost increases during and after the 15-year contract terms proposed in the Application, as there has been no showing that the provisions proposed by Consumers are adequate to ensure that all of the costs of serving new data center customers would be borne by those customers.

24. First, Consumers has stated that the depreciation scheduled for self-generation of new assets can be 30 years or greater, and that Power Purchase Agreements are generally for 15 to 25 years, yet Consumers has proposed a minimum contract term of only 15 years, increasing the likelihood of other customers being left to pay the revenue requirements of Consumers’ investments.

25. Second, Consumers has not provided evidence that its proposed 80% Minimum Billing Demand requirement is sufficient to ensure that a data center customer is fully covering the cost of any investments needed to serve it. It is also notable that Consumers’ proposal lacks a Minimum Charge term like that contained in recently proposed or approved data center tariffs in

⁵ Consumers Energy Company’s Answer to the Association of Businesses Advocating Tariff Equity, The Michigan Attorney General, and the Data Center Coalition’s Motions for a Contested Case and Alternatively Consumers Energy Company’s Request for an In Person Hearing at 6.

⁶ Connolly Testimony at 4:17-20.

other jurisdictions, such as Indiana Michigan Power Company’s (“I&M’s”) recently revised Industrial Power Tariff for new large load customers.⁷

26. Third, Consumers has capped its proposed administrative fee for project proposals at \$100,000 and made that fee discretionary, with no assurance that a data center customer will be covering all relevant costs under that fee.

27. Fourth, regarding the tariff provision allowing a one-time reduction in contract capacity, Consumers has not specified whether notice of capacity reduction must be given a certain amount of time before the data center seeks to reduce capacity and has not set a limit on the magnitude of a contract capacity reduction. For example, I&M’s tariff settlement approved by the Indiana Utility Regulatory Commission requires 42 months’ written notice of a contract capacity reduction prior to the year for which the reduction is sought. The I&M settlement also imposes a capacity reduction fee for reductions beyond 20% of contract capacity, unless I&M agrees that the reduction would not be detrimental to the customer, itself, and all other customers *and* the reduction is submitted to the Indiana Utility Regulatory Commission for its review and approval.⁸ Without similar protections in Rate GPD, there is an increased likelihood of other customers bearing the costs of Consumers’ investments for data centers.

28. Fifth, Consumers has included a term authorizing Consumers to “require additional financial security from Data Center customers receiving service under this rate, including other collateral in amounts up to the projected cost of providing service for the term of the rate contract,”⁹ but has made the proposed financial security requirement completely discretionary. In

⁷ Order of the Commission, *In re Verified Petition of Indiana Michigan Power Company for Approval of Modifications to its Industrial Power Tariff I.P.*, Cause No. 46097 (Ind. Utility Reg. Comm’n Feb. 19, 2025), at 33.35, https://iurc.portal.in.gov/entity/sharepointdocumentlocation/2b48cf93-d9ee-ef11-be20-001dd80b8c52/bb9c6bba-fd52-45ad-8e64-a444aef13c39?file=ord_46097_021925.pdf (“I&M Settlement Order”).

⁸ I&M Settlement Order at 36-40.

⁹ Connolly Testimony Ex. at Sheet No. D-67.10.

contrast, the collateral requirement in the I&M settlement states that “the Large Load Customer *shall* provide collateral to the Company . . . equal to twenty-four (24) multiplied by: (a) during the first year of the contract, the maximum expected monthly non-fuel bill; or (b) after the first year of the contract, the Large Load Customer’s previous maximum monthly non-fuel bill.”¹⁰ The I&M settlement only exempts large load customers from providing collateral if they meet specified credit rating and liquidity requirements.¹¹

29. Sixth, Consumers proposed modified Rate GPD appears to lack any cost-allocation mechanism for directly ensuring that the revenue to serve a data center customer under the tariff exceeds the total costs to serve that customer, nor has Consumers provided for any true-up process in the event that revenues under the tariff turn out to be insufficient to cover costs.

30. Without additional and stronger tariff provisions along the lines of those discussed above, other customers may end up bearing substantial costs for the large amounts of potential data center load that Consumers is anticipating, especially if new generation resources are built or acquired and then data center load fails to materialize or the load is not in place for as long as expected.

31. Consumers has stated “[o]nce large-scale data centers start to come online,” it intends to develop a new “rate specific to data centers.”¹² Presumably, such future data center rate could avoid the shortcomings in the modified Rate GPD proposal at issue here. But Consumers has not provided any estimate as to how long it may be until such new data center tariff might be created, nor how much of the “over 15 gigawatts” of data center load currently in its economic development pipeline is likely to be signed up for 15-year contracts under its proposed modified

¹⁰ I&M Settlement Order, Settlement Agreement Attachment A (emphasis added).

¹¹ *Id.*

¹² Connolly Testimony at 5:10-12.

Rate GPD. Nor has Consumers proposed in its present Application that it would shift contracted data center customers to that data center-specific rate when it is created or sought a clear Commission statement that it should do so. As such, even if Consumers does create a more protective data center tariff in the future, there is a likelihood that significant amounts of expensive and risky data center load would end up covered only under the insufficiently protective modified Rate GPD that Consumers proposes here.

32. Because Consumers has not “rule[d] out the possibility that some of [its] customers will experience cost increases as a result of approval of the application,” the proposed revisions to Rate GPD are not statutorily eligible for *ex parte* approval under MCL 460.6a. Case No. U-15161, Order, February 7, 2007, p. 2.

33. Furthermore, the Commission has “broad discretion” under Mich. Admin. Code R 792.10415 “to set any matter for a contested case where not prohibited by law.” Case No. U-20763, Order, June 30, 2020, p. 69. The Commission has utilized this discretion to open contested case proceedings in matters involving “significant public interest and concern,” “significant factual and policy questions,” and “complex legal determinations that can only be resolved with the benefit of discovery, comprehensive testimony and evidence, and a well-developed record.” *Id.* MNSC urges the Commission to utilize such discretion here, given the substantial amounts of potential load, costs, and financial risks to other customers at issue, and the newness and complexity of the issues surrounding data center load. Those same factors – magnitude of the potential load, costs and financial risks at stake, and complexity and newness of the issues – render a comment schedule insufficient to ensure a robust evaluation and resolution of matter.

34. The Commission has further noted that it “may ask for comments or may direct a contested proceeding in cases involving a program that draws significant criticism.” Case No. U-18349, Order, July 12, 2017, p. 15.

35. This is such a case, and MNSC intends to join other parties that have already petitioned to intervene in raising significant legal, factual, and public policy concerns pertaining to the inadequacy of the proposed rate design for Consumers’ data center customers, including but not limited to those concerns already outlined in this Petition.

36. As the Attorney General raised in her Petition to Intervene and for a Contested Proceeding, Consumers’ Application implicates important legal and factual questions regarding Consumers’ statutory obligations, including its obligations to meet renewable energy portfolio standards under Public Act 235 and to comply with the MCL 205.54ee clean energy standard.¹³

37. MNSC also notes that although Rate GPD currently includes provisions related to interruptible service, green generation, and renewable energy credits, Consumers’ Application does not contain a showing as to whether those provisions are sufficient or should be revised in light of the magnitude and uniqueness of Consumers’ anticipated data center customers, raising additional factual and policy concerns regarding the sufficiency of Consumers’ proposal.

38. Finally, MNSC notes that proceedings in other jurisdictions have demonstrated that tariff revision proceedings for new large load customers benefit from “discovery, comprehensive testimony and evidence, and a well-developed record.” Case No. U-20763, Order, June 30, 2020, p. 69. For example, after I&M petitioned for approval of modifications to its Industrial Power Tariff for new large load customers, the Indiana Utility Regulatory Commission conducted an adjudicatory hearing process that resulted in the approval of an unopposed settlement agreement

¹³ Attorney General’s Petition to Intervene and for a Contested Proceeding at ¶¶ 10-13.

containing numerous additional or modified provisions.¹⁴ Likewise, in the West Virginia Public Service Commission, Appalachian Power Company and Wheeling Power Company’s petition for tariff revisions for new large load customers led to a pending settlement agreement informed by several rounds of discovery requests and testimony.¹⁵ The Ohio Public Utilities Commission also has an ongoing evidentiary proceeding related to Ohio Power Company’s proposed tariffs for data centers and mobile data centers.¹⁶

39. In light of the issues that MNSC raises in this Response, MNSC requests that the Commission deny *ex parte* approval of Consumers’ proposed revisions to Rate GPD and open a contested case proceeding to resolve these issues. MNSC further supports the Attorney General’s request to set a schedule allowing at least 180 days from the date of the Company’s application before a final order is issued by the Commission.

TROPOSPHERE LEGAL, PLC
Counsel for MNSC

Date: March 6, 2025

By: _____

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Phone: 231-709-4000
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¹⁴ I&M Settlement Order.

¹⁵ Joint Stipulation and Agreement for Settlement, *In re Appalachian Power Company and Wheeling Power Company’s Application for Approval of Revisions to Schedules LCP and IP*, Case No. 24-0611-E-T-PW (W.V. P.S.C. Jan. 22, 2025), <https://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=634939&NotType=WebDocket>.

¹⁶ *In re Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers*, Case No. 24-508-EL-ATA (Ohio P.U.C.), docket available at <https://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=24508&x=0&y=0>.

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
PUBLIC SERVICE COMMISSION

ENTRY OF APPEARANCE IN AN ADMINISTRATIVE HEARING

This form is issued as provided for by 1939 PA 3, as amended, and by 1933 PA 254, as amended. The filing of this form, or an acceptable alternative, is necessary to ensure subsequent service of any hearing notices, Commission orders, and related hearing documents.

General Instructions:

Type or print legibly in ink. For assistance or clarification, please contact the Public Service Commission at (517) 284-8090.

*Please Note: The Commission will provide **electronic** service of documents to all parties in this proceeding.*

THIS APPEARANCE TO BE ENTERED IN ASSOCIATION WITH THE ADMINISTRATIVE HEARING:

Case / Company Name: Consumers Energy Company Docket No. U-21859

Please enter my appearance in the above-entitled matter on behalf of:

1. (Name) Michigan Environmental Council (MEC)
2. (Name) Natural Resources Defense Council (NRDC)
3. (Name) Sierra Club (SC)
4. (Name) Citizens Utility Board of Michigan (CUB)
5. (Name)
6. (Name)
7. (Name)

Name Christopher M. Bzdok
Address 420 E. Front Street

City Traverse City State MI
Zip 49686 Phone (231) 709-4000
Email chris@tropospherelegal.com
Date March 7, 2025

I am not an attorney
 I am an attorney whose:
Michigan Bar # is P- 53094
_____ Bar # is: _____
(state)

Signature:  Digitally signed by Christopher Bzdok
DN: cn=Christopher Bzdok, o=Troposphere Legal,
email=chris@tropospherelegal.com, c=US
Date: 2025.03.06 16:27:06 -05'00'

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EAHR1 - 09/29/2016

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
CONSUMER ENERGY COMPANY's for
Ex Parte Approval of Certain Amendments to
Rate GPD.

Case No. U-21859

PROOF OF SERVICE

On the date below, an electronic copy of **Petition to Intervene and Motion for Contested Case by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan and Appearance of Christopher M. Bzdok** was served on the following:

Name/Party	E-mail Address
Administrative Law Judge Katherine E. Talbot	Talbotk@michigan.gov
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{signature on following page}

The statements above are true to the best of my knowledge, information and belief.

TROPOSPHERE LEGAL, PLC
Counsel for MNSC

Date: March 7, 2025

By: _____
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