

April 8, 2025

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Post Office Box 30221
Lansing, MI 48909

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 Ms. Felice:

Enclosed for electronic filing in the above-captioned case, please find **Consumers Energy Company's Motion *In Limine***. This is a paperless filing and is therefore being filed only in PDF. Also included is a Proof of Service showing service upon the parties.

Sincerely,

Anne M. Uitvlugt
Phone: 517-788-2112
Email: anne.uitvlugt@cmsenergy.com

cc: Parties Per Attachment 1 to the Proof of Service

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

CONSUMERS ENERGY COMPANY'S
MOTION IN LIMINE

Pursuant to Rule 432 of the Michigan Public Service Commission's ("MPSC" or the "Commission") Rules of Practice and Procedure, Mich Admin Code R 792.10432, Consumers Energy Company ("Consumers Energy" or the "Company") moves for an order *in limine* to exclude certain evidence and issues that are beyond the scope of this proceeding. In support of this motion, Consumers Energy states as follows:

1. A "motion *in limine*" refers to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered. *Luce v United States*, 469 US 38, 40 n2 (1984); see also *Lapasinskas v Quick*, 17 Mich App 733; 170 NW2d 318 (1969). Motions *in limine* are well-established in common law and fall within the Commission's authority to manage the course of hearings. Motions *in limine* are generally used to ensure evenhanded and expeditious management of hearings by eliminating evidence that is clearly inadmissible. See, e.g., *Nelson v American Sterilizer Co*, 212 Mich App 589; 538 NW2d 80 (1995). As a factfinding tribunal, it is "within the sound discretion" of the tribunal to make decisions regarding the relevance and admissibility of evidence. *Shemman v American Steamship Co*, 89 Mich 656, 674; 280 NW2d 852 (1979); see also Mich Admin Code R 792.10427.

2. Consumers Energy submits that the Application it filed in this proceeding is limited in nature. The Company's Application only invokes the Commission's authority under MCL 460.57 and MCL 460.557(2) to amend the tariff governing the "rules and conditions of service" for rate GPD as it applies to a limited subset of potential customers (data centers) who would be eligible to take service under that existing rate. The relief sought also relates only to amendment of those tariff terms. The Company's Application does not invoke: (i) the Commission's general ratemaking authority under MCL 460.552, MCL 460.54, MCL 460.6a, and related statutes, (ii) its authority to ensure compliance with Renewable Portfolio Standards under MCL 460.1028 and related statutes, (iii) its authority to ensure compliance with Clean Energy Standards under MCL 460.1051 and related statutes, (iv) its authority to review and approve Integrated Resource Planning under MCL 460.6t, or (v) any other type of proceeding available under any of the other statutes entrusted to the Commission's oversight and regulatory authority. The Application also does not seek a Commission decision or any relief on any other issue broadly related to "data centers." Finally, the Company's Application does not raise any issue about *whether* the Company should serve new data centers locating in its service territory. Consumers Energy has a duty to serve any new customer requesting service within the Company's service territory. See Mich Admin Code R 460.106(1).

3. As indicated in its Application, the Company is aware of a significant amount of prospective data center load in the economic development pipeline. If service is requested by these prospective customers, the most competitive rate available to them is Rate GPD. Through the filing of its Application, Consumers Energy is proposing to serve prospective load growth in a manner that justly and reasonably balances the interests of the potential data center customers with other Consumers Energy customers. More specifically, the Company is proposing certain tariff

amendments to address the unique circumstances created by data centers and to ensure that accommodating the growth attributed to data centers does not create unacceptable risks for Consumers Energy or its customers.

4. The Company's Application solely addresses the "rules and conditions of service" under Rate GPD and Consumers Energy's proposed modifications to Rate GPD. The amendments include important customer protections such as a minimum contract term, an 80% minimum billing requirement, and an exit fee, which are necessary to mitigate the risks associated with serving large data center loads. The limited proceeding initiated by the Company's Application will allow for a detailed analysis of these protections and their sufficiency in safeguarding the interests of all customers.

5. Consumers Energy moves for an order *in limine* to exclude certain evidence and issues that are beyond the limited scope of this proceeding. Based on the Company's review of the filings made in the docket thus far, it is evident that certain intervening parties intend to raise a number of issues that are not relevant to the proceeding. For example, the CEOs argued that this proceeding is necessary to address data center load issues and ensure alignment with clean energy goals. CEO Petition, page 5. The Attorney General raised concerns related to sales tax exemption for data centers and ensuring the Company's compliance with the renewable energy credit standard, and the clean energy standards. Attorney General's Petition, pages 4-5. These issues, while important, are not relevant to the case at hand and should be addressed in other regulatory proceedings before the Commission that are relevant to and designed to address those concerns.

6. Michigan Rule of Evidence ("MRE") 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination

of the action more probable or less probable than it would be without the evidence.” Rule 402 of the MRE states:

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, these rules, or other rules adopted by the Supreme Court. Evidence which is not relevant is not admissible. (Emphasis added).

The Michigan Supreme Court has found that MRE 401’s definition of “relevant evidence” is comprised of two components: the evidence must be both material and probative. *People v Sabin*, 463 Mich 43, 57; 614 NW2d 888, 896 (2000).

7. The materiality requirement derives from MRE 401’s direction that relevant evidence must be “of consequence to the determination of the action,” while the probative value requirement derives from MRE 401’s direction that relevant evidence must tend to make the existence of a material fact “more or less probable than it would be without the evidence.” *Id.* “Materiality looks to the relation between the propositions for which the evidence is offered and the issues in the case. If the evidence is offered to help prove a proposition which is not a matter in issue, the evidence is immaterial.” *People v Mills*, 450 Mich 61, 67; 537 NW2d 909, 913-14, *mod* 450 Mich 1212 (1995) (quoting 1 McCormick, Evidence (4th ed), § 185, p 776). “A material fact need not be an element of a crime or cause of action or defense but it must, at least, be ‘in issue’ in the sense that it is within the range of litigated matters in controversy.” *Hardrick v Auto Club Ins Ass’n*, 294 Mich App 651, 667; 819 NW2d 28, 37 (2011) (quoting *People v Brooks*, 453 Mich 511, 518, 557 NW2d 106 (1996), quoting *People v Mills*, 450 Mich 61, 68, 537 NW2d 909 (1995), quoting *United States v Dunn*, 805 F 2d 1275, 1281 (CA6 1986) (internal editing marks omitted). Michigan courts have held that “[t]he ‘matter in issue’ is defined to be ‘that matter upon which the plaintiff proceeds by his action, and which the defendant controverts by his pleading.’” *Clements v Constantine*, 344 Mich 446, 453-454; 73 NW2d 889 (1955). Accord, 1 McCormick,

Evidence (5th ed), § 185, p 276 (“What is ‘in issue,’ that is, with the range of the litigated controversy, is determined mainly by the pleadings and controlled by substantive law.”) In other words, the “matters in issue” are defined by the pleadings (the Company’s application in this context) and the elements of the law invoked by the application for relief.

8. The scope of this proceeding is limited to matters that are directly relevant to the Company’s proposed tariff modifications and the “rules and conditions of service” for data centers under the tariff. Therefore, Consumers Energy seeks an order directing that the following issues be excluded as legally irrelevant to this proceeding and that the parties are prohibited from offering evidence on the following issues: (1) whether Consumers Energy should serve data center load, (2) the development of a new rate for data centers, (3) the impact of data centers on other utility requirements (e.g. compliance with the renewable energy credit standard, the clean energy standard, etc.), and (4) the requirements for data centers to meet a Michigan sales tax exemption. Specifically, Consumers Energy requests that the Administrative Law Judge (“ALJ”) limit the parties’ evidentiary presentations to issues pertaining to the “rules and conditions of service” for potential new data center customers under Rate GPD, including the reasonable protections that should be put in place due to the size of the data center customer’s load and the impacts it could cause to the Company and its other customers. Expanding the scope beyond the proposed modifications would introduce extraneous and irrelevant issues that are not pertinent to the resolution of the current matter.

Granting Consumers Energy’s requested motion *in limine* would promote the efficient and orderly consideration of the issues which are appropriate for determination in this case, and would prevent unnecessary and unfairly prejudicial expansion of this case to include issues which could confuse the matters at hand and distract from the core issues. The Company therefore requests the

ALJ to issue the requested motion *in limine* in order to prevent the expansion of the Company's limited in nature filing.

WHEREFORE, Consumers Energy Company respectfully requests the Administrative Law Judge to issue the Company's requested motion *in limine*.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: April 8, 2025

By:

Anne M. Uitvlugt (P71641)
Bret A. Totoraitis (P72654)
One Energy Plaza
Jackson, Michigan 49201
Attorneys for Consumers Energy Company
(517) 788-2112

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NOTICE OF HEARING

To: Counsel of Record

PLEASE TAKE NOTICE that Consumers Energy Company's Motion *In Limine* will be brought for hearing before Administrative Law Judge Katherine E. Talbot on April 16, 2025 at 9:30 a.m. (or as soon thereafter as the parties may be heard).

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: April 8, 2025

Anne M. Uitvlugt (P71641)
Bret A. Totoraitis (P72654)
One Energy Plaza
Jackson, Michigan 49201
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PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Melissa K. Harris, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on April 8, 2025, she served an electronic copy of **Consumers Energy Company’s Motion *In Limine*** upon the persons listed in Attachment 1 to this Proof of Service.

Melissa K. Harris

Subscribed and sworn to before me this 8th day of April 2025.

Crystal L. Chacon, Notary Public
State of Michigan, County of Eaton
My Commission Expires: 05/25/30
Acting in the County of Jackson

ATTACHMENT 1 TO CASE NO. U-21859

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