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April 14, 2025

**VIA ELECTRONIC CASE FILING**

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

**Re: 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 Response to Consumers Energy Company's Motion in Limine** and **Proof of Service** as it relates to in the above-referenced matter.

Sincerely,

**CLARK HILL PLC**  
**Stephen A. Campbell**  
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SAC/nb  
Enclosures

cc: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>CONSUMERS ENERGY COMPANY</b>	)	Case No. U-21859
for Ex Parte Approval of Certain Amendments	)	
to Rate GPD.	)	Hon. Katherine E. Talbot
_____	)	

**RESPONSE TO  
 CONSUMERS ENERGY COMPANY’S MOTION *IN LIMINE* OF THE  
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by and through its attorneys, Clark Hill PLC, pursuant to Mich Admin Code, R 792.10432(3) and the schedule issued by the presiding Administrative Law Judge (“ALJ”) in this proceeding, hereby responds to Consumers Energy Company (“Consumers” or “Company”)’s Motion *In Limine* (“Motion”) filed in this proceeding.

## **I. INTRODUCTION**

The Company's Motion improperly requests the ALJ exclude consideration of developing a new rate for data center customers from this proceeding. The fundamental issue in this case is the most effective method of protecting existing customers from the unique risks presented by the distinctive operational and load characteristics of data centers. Indeed, the Company's own filings in this proceeding highlight the significant differences between data centers and the Company's current Rate GPD customers, and the need to protect the latter from the former. As such, evidence regarding the development of a new rate for data centers, as opposed to serving them under Rate GPD, is relevant to this proceeding and the Commission should deny the Company's Motion as it pertains to this issue.

## **II. STANDARD OF REVIEW**

A motion *in limine* is generally for the purpose of excluding or precluding the admission of evidence which is not relevant or admissible. See *Miles v TGI Friday's*, per curiam opinion of the Court of Appeals, issued May 13, 1997 (Docket No. 191337 et seq.), p \*2; *Martin v Geico Gen Insur Co*, per curiam opinion of the Court of Appeals, issued August 17, 2023 (Docket No. 362010), p \*3. Under MRE 401 evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action.

## **III. ARGUMENT**

### **A. Whether data center load should be served under Rate GPD or a new rate specifically for data center customers is a relevant issue in this proceeding.**

The Company's Motion requests the Commission exclude as legally irrelevant to this proceeding certain issues, and prohibit parties from offering evidence on those issues, including "the development of a new rate for data centers." (Motion at 5.) Because the particular rate

structure and provisions under which data centers are served, and which are necessary to protect existing customers from the risks presented by data centers, is relevant in this proceeding, the Commission should deny the Motion with regard to this issue.

As the Michigan Supreme Court has explained, relevant evidence “is evidence that is material related to any fact that is of consequence to the action[] and has probative force (any tendency to make the existence of a fact of consequence more or less probable than it would be without the evidence).” *People v Sabin*, 463 Mich 43, 56-57 (2000). A “material fact is one that is ‘in issue’ in the sense that it is within the range of litigated matters in controversy.” *Id.* (internal citations omitted). Probative force “is the ‘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.’” *People v Mills*, 450 Mich 61, 68 (1995). Further, “‘any’ tendency is sufficient probative force.” *Id.*

Evidence regarding whether it would be more reasonable to develop a new rate for data centers customers, rather than serve them under Rate GPD, is material, probative, and therefore relevant to this action. As Consumers’ Motion explains, by filing its application in this proceeding “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.” (Motion at 2-3.) The Company’s application proposes “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.” (*Id.*) Thus, this proceeding “will allow for a detailed analysis of these protections and their sufficiency in safeguarding the interests of all customers.” (*Id.* at 3.)

In explaining the need to revise its tariffs to protect existing customers, the Company explained the unique risks presented by serving data centers as a result of their distinct characteristics, contrasted with those of current Rate GPD customers. Specifically, as the Company's application set out, the "load profile of data centers is unique" and they "are extremely large loads but bring more risk than other Rate GPD customers as these customers are unlike traditional manufacturing customers who take service under Rate GPD." (Application at 2.) As such, there is "a greater risk for stranded assets with respect to data center customers than exists for other Rate GPD customers." (*Id.*) Thus, the fundamental purpose of this proceeding is to address "additional protections" the Company believes "are necessary due to the size of the data center customer's load and the impacts it could cause to the Company and its other customers." (*Id.* at 2-3.) Given the contrast between the Company's current and typical GPD customers and data centers, as well as the unique risks posed by the latter including, as the Company specifically noted, "a greater risk for stranded assets with respect to data centers than exists for other Rate GPD customers," the development of a new rate for data centers is relevant to analyzing the necessary "additional protections" that are the animating purpose of this proceeding. This issue is also clearly material and probative, and thus relevant, for the purpose of conducting the "detailed analysis" of necessary protections for which Consumers stated this proceeding would allow, and considering the "sufficiency in safeguarding the interests of all customers" of Consumers' proposed revisions.

For instance, as Consumers further explained in its 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." (See Connolly Direct at 9-10.) Thus, Consumers explicitly drew the contrast between Rate GPD customers and data centers, noting that it was "proposing to amend Rate GPD to include

these changes only for new data centers above 100 MW, and not all new Rate GPD customers with very large loads,” because “new large scale data centers are different than other Rate GPD customers” and the additional proposed tariff provisions are “tailored specifically to the risks which new data centers present for the Company and its other customers.” (*Id.*) In other words, data center customers are not like existing Rate GPD customers, and whether or not they should be served under the same rate is a relevant issue in this proceeding. As the Company explained, “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.” (*Id.*) 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.” (*Id.*)

Indeed, the application acknowledged the need to “designate customers as data centers so that the customers’ load shape can be better analyzed,” again effectively acknowledging the unique and novel characteristics of these customers in contrast to those currently taking service under Rate GPD. (*Id.*) Evidence regarding the prudence, reasonability, and necessity of developing a new rate for data centers to protect existing Rate GPD customers from the unique risks Consumers noted in its filings is therefore material to this proceeding, in that it is within the range of litigated matters in controversy; namely, as Consumers put it, “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.” (Motion at 5.) It also has probative force, in that it makes 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; namely, whether Consumers’ proposal does in fact constitute adequate protection for Rate GPD customers given that data center customers “are unique” and “bring more risk than other Rate GPD customers.” (Connolly Direct at 9.) Evidence regarding the development of a new rate for data centers is therefore relevant to this proceeding, given that its purpose is, again, to “allow for a detailed analysis of [Consumers’ proposed protections] and their sufficiency in safeguarding the interests of all customers.” (Motion at 3.)

The Company’s filings in this case have expounded upon the differences between data center customers and its existing Rate GPD customers. These differences and unique risks implicate significant cost allocation issues<sup>1</sup> that are material and relevant to the determination of the fundamental issue in this proceeding which is, as Consumers explained, “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.” (Motion at 5.) Thus, given the differences and unique risks posed by data centers contrasted with typical and current Rate GPD customers, and need to consider the sufficiency of Consumers’ proposal to protect the latter from the former, evidence regarding the development of a new rate for data centers is clearly material, probative, and thus relevant to this proceeding.

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<sup>1</sup> As noted above, the Company acknowledged the concern that there is “a greater risk for stranded assets with respect to data center customers than exists for other Rate GPD customers.” (Application at 2.) Thus, as explained in ABATE’s Petition to Intervene and Motion for a Contested Case Proceeding in this case, the potential cost of stranded assets and whether 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, is relevant to this proceeding. (Case No. U-21859, Filing No. 5 (February 20, 2025).)

**IV. CONCLUSION**

WHEREFORE, the Association of Businesses Advocating Tariff Equity requests the Michigan Public Service Commission deny Consumers Energy Company's Motion *In Limine* with regard to the issue of the development of a new rate for data centers.

Respectfully submitted,

**CLARK HILL PLC**

By: **Stephen A. Campbell**

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Date: April 14, 2025

STATE OF MICHIGAN

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**CONSUMERS ENERGY COMPANY** for )  
Ex Parte Approval of Certain Amendments to )  
Rate GPD. )  
\_\_\_\_\_ )

Case No. U-21859

Hon. Katherine E. Talbot

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) ss  
COUNTY OF WAYNE )

Stephen A. Campbell, being first duly sworn, deposes and says that on April 14, 2025, he did cause to be served the *Association of Businesses Advocating Tariff Equity's Response to Consumers Energy Company's Motion in Limine*, as well as this *Proof of Service*, in the above docket, via electronic mail, to the persons identified on the attached service list.

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**SERVICE LIST**  
**MPSC Case No. U-21859**

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**Environmental Law & Policy Center**  
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