



ENVIRONMENTAL LAW & POLICY CENTER

April 14, 2025

Via E-File

Ms. Lisa Felice
Michigan Public Service Commission
7109 W. Saginaw Hwy.
P. O. Box 30221
Lansing, MI 48909

RE: MPSC Case No. U-21859

Dear Ms. Felice:

Attached for paperless electronic filing, please find the Response in Opposition to Consumers Energy Company's Motion *In Limine* by The Ecology Center, The Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar (collectively the "Clean Energy Organizations" or "CEO"). Attached is also proof of service.

Sincerely,

Daniel Abrams (P87696)
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cc: Service List, Case No. U-21859

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**STATE OF MICHIGAN
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.)	

**CLEAN ENERGY ORGANIZATIONS' RESPONSE IN OPPOSITION
TO CONSUMERS ENERGY COMPANY'S MOTION *IN LIMINE***

April 14, 2025

Pursuant to Rule 432(3) of the Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” or the “Commission”), the Environmental Law & Policy Center, Ecology Center, Union of Concerned Scientists, and Vote Solar (collectively, the “Clean Energy Organizations” or “CEO”) file their Response in Opposition to Consumers Energy Company’s (“Consumers” or “the Company”) Motion *In Limine*.

1. This case addresses an emerging issue of great public importance. The Company’s Application in support of its proposed tariff changes describes “an influx” in requests to serve large data center loads. Some of these facilities are massive and unprecedented, with some inquiries exceeding 1,000 MW in size. Connolly Direct at 9. (For context, the Company’s largest existing Rate GPD customer is around 28 MW in size). *Id.* In total, the Company reports over 15 gigawatts of data center load in its economic development pipeline and expects this trend to continue increasing. *Id.* at 4.

2. This influx of massive new data center demand is creating new challenges and risks for Consumers Energy and other utilities across the country. The Company explains that the unique load profile of data centers, coupled with their relative lack of on-site employees and local supply chain needs, “create a greater risk for stranded assets with respect to data center customers than exists for other Rate GPD customers.” Application at 2.

3. It also creates risks and challenges for Michigan’s resource adequacy and clean energy goals. As the CEO stated in their Petition for Contested Case, “[t]he anticipated load growth related to data centers will stress the Company’s ability to decarbonize its generation portfolio, meet the State’s clean energy goals and deliver the associated benefits of clean energy to its customers.” CEO Petition for Contested Case at 5.

4. The CEO are sympathetic to the Company's desire to act quickly in this case. They support the Company's stated intent to develop tariffs that address the unique characteristics of data centers without creating unreasonable risks for the Company and its customers. However, there is also a risk in limiting this case to only the narrow financial issues addressed in the Company's application while ignoring or delaying action on the broader resource adequacy and clean energy policy risks caused by the same trends.

5. For these reasons, the CEO objected to Consumers Energy's request for a narrow *ex parte* docket to consider limited changes to Rate GPD. Instead, the CEO requested a contested case so that the Commission could assess the need for a broader tariff that includes "an avenue for large load customers to access clean power." CEO Petition for Contested Case at 5. The Michigan Attorney General, the Association of Businesses Advocating Tariff Equity ("ABATE"), the Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan (collectively, "MNSC"), and the Data Center Coalition ("DCC") also objected to the Company's *ex parte* filing and requested a contested case hearing.

6. The Commission's March 13, 2025 Order struck a reasonable balance. It agreed with the CEO and the other non-utility parties that "*ex parte* treatment of the application is not appropriate." "The electric load of new data centers presents unique and significant cost implications, and the development of an evidentiary record ... is prudent and reasonable." Order at 3. At the same time, the Commission expressed a "goal of issuing an expeditious decision," setting a six-month deadline for assembling the record and indicating its intent to read the record directly without a proposal for decision. *Id.*

7. In ordering a contested case, the Commission invoked its authority under MCL 460.6a(3) which allows the Commission to order “an opportunity for a full and complete hearing.” The Commission also cited to another instance where it rejected *ex parte* approval and ordered a contested case, on Enbridge’s Line 5 application. In that case, the Court justified its decision by pointing to the “significant public interest and concern” around the application which warranted a contested case and development of a full and complete record. Case No. U-20763 at 69-70 (June 30, 2020).

8. The March 13 Order was well within the Commission’s broad discretion to establish rates for electric service in a reasonable and prudent manner. MCL 460.6a. If that requires consideration of evidence beyond the narrow bounds of the Company’s request, that is the Commission’s prerogative. *In re Consumers Energy Co.*, 278 Mich. App. 547, 563 (2008) (In pursuit of just and reasonable rates, the Commission “may, in the exercise of its discretion, determine what factors are relevant in a particular case.”).

9. The ALJ should deny the Company’s Motion *In Limine* because it would upset the balance struck by the Commission in its March 13 Order. Just like in the Enbridge case, load growth related to data centers is an issue of “significant public interest and concern.” Case No. U-20763 at 69-70 (June 30, 2020). Contrary to the Commission’s interest in the development of a full record, the Company’s Motion would limit the scope to only the narrow financial listed issues in its original Application. If the Motion is denied, the parties will have flexibility to propose and present evidence addressing the broader resource adequacy and clean energy challenges created by the influx of new data center load. Because the Commission is reading the record, it can determine for itself what evidence is probative on the most relevant and important issues raised by the parties.

10. Further, the Company's own application directly implicates one of its proposed forbidden issues, and indirectly implicates many of the other issues. First, the Company argues that "parties [should be] prohibited from offering evidence on ... (2) the development of a new rate for data centers," but the Company's testimony accompanying its application contemplates that exact step in the process. Specifically, Company Witness Connolly states that "[o]nce large-scale data centers start to come online, the Company expects to use the load data to analyze putting data centers in their own cost of service column and developing a rate specific to data centers." Connolly Direct at 5. The CEO disagrees on this point, and wishes to submit testimony on the timing and plan for the development of a rate specific to data centers. Just as it envisioned in ordering a contested case, the Commission would benefit from a full evidentiary record on this issue.

11. Second, as the CEO and other parties' petitions demonstrate, the issue of data center interconnection and startup necessarily impacts many of the State's energy and climate related goals. The Company has not put forward a good reason why these issues should be delayed until future proceedings. For example, the Company's projected significant load growth will necessarily implicate its clean energy deployment strategy and its renewable portfolio standard compliance. While these issues will be addressed in part in other proceedings, the initial roll out of terms for data centers can and should include terms related to clean energy. The CEO plans to submit testimony to this effect, advocating for use of the Company's voluntary pricing program as a means to ensure that data centers come online with the proper energy mix.

12. Data centers raise unique issues that deserve full and fair review. The ALJ should deny the Company's Motion to avoid unduly limiting the scope of evidence—and therefore the range of potential solutions—available to the Commission in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Abrams", is written over a horizontal line.

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Dated: April 14, 2025

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing *Response in Opposition to Consumers Energy Company's Motion In Limine by The Ecology Center, The Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar (collectively the "Clean Energy Organizations" or "CEO")* was served by electronic mail upon the following Parties of Record, Monday, April 14, 2025.

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