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STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of Case No. U-21859  
CONSUMERS ENERGY COMPANY for  
Ex Parte Approval of Certain Volume I  
Amendments to Rate GDP.

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PREHEARING and MOTION IN LIMINE

Proceedings held via Microsoft Teams in  
the above-entitled matter before Katherine E. Talbot,  
Administrative Law Judge with MOAHR, for the Michigan  
Public Service Commission, Lansing, Michigan, on  
Wednesday, April 16, 2025, at 9:44 AM Eastern.

APPEARANCES:

ANNE M. UITVLUGT, ESQ.  
BRETT TOTORAITIS, ESQ.  
Consumers Energy Company  
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On behalf of Consumers Energy Company

AMIT T. SINGH, ESQ.  
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On behalf of Michigan Public Service Commission Staff

(Appearances continued)

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4 On behalf of Attorney General Dana Nessel  
5

6 CHRISTOPHER M. BZDOK, ESQ.  
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7 Traverse City, Michigan 49686  
8 On behalf of Michigan Environmental Council, National  
Resources Defense Council, Sierra Club, and Citizens  
9 Utility Board of Michigan (MNSC)  
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11 NIKHIL VIJAYKAR, ESQ.  
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13  
14 On behalf of Data Center Coalition

15 MICHAEL G. OLIVA, ESQ.  
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18 On behalf of Data Center Coalition

19 STEPHEN A. CAMPBELL, ESQ.  
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20 500 Woodward Avenue  
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21 Detroit, Michigan 48226  
22 On behalf of Association of Businesses Advocating  
Tariff Equity (ABATE)  
23

24  
25 (Appearances continued)

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On behalf of Switch Limited

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On behalf of The Ecology Center, the Environmental  
Law and Policy Center, the Union of Concerned  
Scientists, and Vote Solar; collectively, The Clean  
Energy Organizations (CEO)

LAURA A. CHAPPELLE, ESQ.  
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On behalf of Michigan Energy Innovation Business  
Council, the Institute for Energy Innovation, and  
Advanced Energy United (MEIU)

REPORTED BY: Dawn M. Houghton, CSR-3071

1 Wednesday, April 16, 2025

2 9:44 AM Eastern

3 - - -

4 (Hearing commenced pursuant to due notice)

5 JUDGE TALBOT: We're on the record in  
6 Michigan Public Service Case No. U-21859. It's in the  
7 matter of the application of Consumers Energy Company for  
8 ex parte approval of certain amendments to rate GPD  
9 tariff.

10 Today's date is April 16th, 2025.  
11 Today is the date set for a prehearing and some argument  
12 on a motion. It's being heard by Microsoft Teams.

13 I'm Administrative Law Judge Katherine  
14 Talbot. I'm the presiding officer on behalf of the  
15 Commission.

16 And let's start with appearances, and  
17 then we might -- we'll handle a preliminary motion before  
18 we finish the prehearing. So let's start with  
19 appearances. I'll start with the Company.

20 MS. UITVLUGT: Good morning, Your  
21 Honor. Anne Uitvlugt appearing on behalf of Consumers  
22 Energy. I'd also like to enter the appearance of Bret  
23 Totoraitis.

24 JUDGE TALBOT: Okay. Thank you.

25 And Staff?

1 MR. SINGH: Good morning, Judge. Amit  
2 Singh and Adam Cozort on behalf of Staff.

3 JUDGE TALBOT: Thank you.  
4 The Data Center Coalition.

5 MR. VIJAYKAR: Good morning, Your  
6 Honor. On behalf of Data Center Coalition, Nick Vijaykar  
7 from the law firm Keyes & Fox. And I'll also note that  
8 co-counsel is on, and he can enter his own appearance.

9 MR. OLIVA: Michael Oliva, Foster Swift  
10 Collins and Smith, on behalf of the Data Center Coalition.

11 JUDGE TALBOT: Thank you.  
12 And ABATE.

13 MR. CAMPBELL: Good morning, Your  
14 Honor. Steve Campbell, Clark Hill, PLC, on behalf of the  
15 Association of Businesses Advocating Tariff Equity.

16 JUDGE TALBOT: Thank you.  
17 And the Attorney General.

18 MR. WOLLENZIEN: Good morning, Your  
19 Honor. Lucas Wollenzien for Attorney General Dana Nessel.

20 JUDGE TALBOT: Thank you.  
21 And I'll just use acronyms, so that's  
22 what I'm going to do. MNSC.

23 MR. BZDOK: Good morning, Your Honor.  
24 Christopher Bzdok for the Michigan Environmental Council,  
25 National Resources Defense Council, Sierra Club, and

1 Citizens Utility Board of Michigan, referred to in these  
2 proceedings as MNSC.

3 JUDGE TALBOT: Thank you.

4 And I have Switch Limited.

5 MS. BRADER: Valerie Brader appearing  
6 on behalf of Switch this morning, Your Honor.

7 JUDGE TALBOT: Thank you.

8 And I have the CEO.

9 MR. ABRAMS: Good morning, Your Honor.  
10 Daniel Abrams appearing on behalf of The Ecology Center,  
11 the Environmental Law and Policy Center, the Union of  
12 Concerned Scientists, and Vote Solar; collectively, The  
13 Clean Energy Organizations or CEO.

14 JUDGE TALBOT: Thank you.

15 And then MEIBC.

16 MS. CHAPPELLE: Good morning, Your  
17 Honor. Laura Chappelle appearing this morning on behalf  
18 of the Michigan Energy Innovation Business Council, the  
19 Institute for Energy Innovation, and Advanced Energy  
20 United, collectively MEIU.

21 And I'd also like to put in appearances  
22 for Justin Ooms and Timothy Lundgren with the Potomac Law  
23 Group. Thank you.

24 JUDGE TALBOT: Thank you.

25 All right. Now pursuant to some

1 discussion prior to going on the record, there's a request  
2 by the Company for in-person hearings in this case,  
3 specifically related in my -- we're going to focus a  
4 little bit on the cross-examination.

5 So as I indicated prior to the start of  
6 the hearing, there is a requirement of showing of good  
7 cause for a request for an in-person hearing, and absent  
8 that, there's a default position by the Director, that was  
9 placed into policy by the Director of my organization, the  
10 Michigan Administrative Hearings and Rules -- Office of  
11 Hearings and Rules, that sets as a default the virtual  
12 hearing by Microsoft Teams. And I note for the record  
13 that that has been implemented effectively for several  
14 years now.

15 So we're going to start with the motion  
16 for in-person hearing. I'm going to go ahead and hear --  
17 I'll start with the Company because they made the motion,  
18 and then anybody else who wants to argue.

19 So go ahead, Ms. Uitvlugt. I say it  
20 wrong every time. I'm sorry.

21 MS. UITVLUGT: It's Uitvlugt, Your  
22 Honor.

23 I'll keep this very brief. Consumers  
24 Energy is requesting the moving forward with in-person  
25 hearings. Subject to our conversations off the record, I

1 recognize that availability of witnesses in needing to  
2 appear virtual would make that request difficult.

3 Consumers Energy takes the position  
4 that in-person hearings allows for a better hearing  
5 process. It allows for smoother conversation. And it  
6 allows for more interactions between the parties, which we  
7 believe is beneficial for moving forward in an expedited  
8 manner with cases.

9 I will also note for the record that  
10 while this is the first time Consumers Energy is making  
11 this request, the Company will begin making these requests  
12 more often in its hearings, just for the parties'  
13 awareness.

14 JUDGE TALBOT: All right. Thank you  
15 very much.

16 Again, prior to the start of the  
17 hearing, several parties expressed an interest in weighing  
18 in on this motion, so why don't I just start with -- I  
19 remember you, Mr. Bzdok.

20 MR. BZDOK: Thank you, Your Honor.

21 Couple of comments. First of all, I  
22 support the statements by Consumers' counsel as to the  
23 characterization of in-person hearings in general.

24 I am not aware of any court in Michigan  
25 that is holding trial type proceedings remotely. I

1 believe the tax tribunal is frequently doing the big cases  
2 in-person. I believe that EGLE is doing hearings  
3 in-person.

4 I would note that the standard for --  
5 the MOAHR standard for hearings is that they are either at  
6 the discretion of the ALJ or based on a request by a  
7 party, in which case good cause needs to be demonstrated,  
8 so I believe that under the Commission's order in this  
9 case and under the MOAHR standard, the ALJ has discretion  
10 over these matters, and it is not a strict good cause  
11 standard. It's either discretion or good cause if it's  
12 based upon a party's request.

13 And so for all of the reasons stated by  
14 Consumers, I just don't believe -- well, we would support  
15 that hearing. And I would further note that, you know, as  
16 to witnesses and lawyers who are out of state, I think the  
17 expectation should be, if you're going to do a case in  
18 Michigan, you should not expect to not have to come to  
19 Michigan. This is where the cases are. That's it.

20 JUDGE TALBOT: All right. Thank you.

21 And I don't remember who wanted to go  
22 next, so whoever wants to, speak up. Nobody else?

23 MS. BRADER: Your Honor, Valerie Brader  
24 for Switch. Recognizing that there is a benefit to  
25 in-person, there is also, however, a great deal of

1 difficulty in setting a schedule if there is going to be  
2 in-person, given that the Commission has for years now had  
3 virtual hearings.

4 I, and I think other counsel, had  
5 assumed, in trying to set the schedule in preparation for  
6 this hearing, that we were not also trying to find times  
7 when folks could come in person. And while Switch is  
8 certainly a Michigan business and has many employees in  
9 Michigan, it may need to bring in witnesses to protect its  
10 interests.

11 It did not initiate this proceeding and  
12 is only in because it is concerned that there will be an  
13 effect to current rates, despite what was said,  
14 specifically, the reporting requirement, so it does seem  
15 quite burdensome to require an in-person hearing given the  
16 tradition of not doing so.

17 And I will not be able to agree to the  
18 schedule today. I would have to ask for permission to  
19 seek further clarification from my client about whether  
20 those dates would still work if you do, in your discretion  
21 or after finding of good cause, determine that this must  
22 be in-person, the cross-exam. Thank you.

23 JUDGE TALBOT: Thank you.

24 Anybody else?

25 MR. VIJAYKAR: I can go next, Your

1 Honor. This is Nick Vijaykar on behalf of the Data Center  
2 Coalition.

3 I also agree with counsel for the  
4 Company's characterization. In-person hearings, I find  
5 that they have many advantages over -- over the virtual  
6 hearing process. Having said that, we've done several  
7 virtual hearings now in Michigan and in other states and  
8 find it to be a workable alternative.

9 In this case, we certainly have -- even  
10 though the cross-examination dates have changed a bit  
11 since our discussions with the parties, we certainly have  
12 no problem with committing that our attorneys would be in  
13 person if the dates were moved around, as we've discussed.

14 Witnesses are a different thing. And  
15 when we engaged in scheduling discussions, we did so with  
16 the understanding that witnesses would not have to fly in  
17 for a hearing. Certainly happy to have that discussion  
18 with our witness if Your Honor allowed us the opportunity  
19 to do so, but at this time, we just can't agree to an  
20 in-person hearing if that means our witness is going to be  
21 committed to being in person on the cross-examination  
22 dates that we've discussed.

23 So I'd oppose the request for an  
24 in-person only hearing at this point, while acknowledging  
25 that there are some merits to an in-person process.

1 JUDGE TALBOT: Thank you.

2 All right. Anybody else?

3 MS. CHAPPELLE: Yes, Your Honor.

4 MR. CAMPBELL: This is Steve --

5 MS. CHAPPELLE: Oh, I'm sorry. Go  
6 ahead, Steve.

7 MR. CAMPBELL: Laura, go ahead.

8 MS. CHAPPELLE: Just real quickly, Your  
9 Honor, I just want to say -- would also just like to say,  
10 on behalf of MEIU, I think these are good and valid points  
11 on both sides.

12 I will just say, especially in terms of  
13 attorneys committing to discuss either settlement or work  
14 with the other attorneys in person, we can certainly  
15 commit to that. However, both of our witnesses for this  
16 case do live out of state. And I will say it is a cost.  
17 It's a serious cost to the witnesses to come in,  
18 especially if we have, for example, a type of  
19 cross-examination that ends up going very quickly.

20 And you're committing to that time.  
21 And for various reasons, and we've seen this happen  
22 before, parties start agreeing before cross, you've made  
23 time and cost commitments to travel in, and it ends up  
24 being very quick.

25 So I would just say I understand this

1 is a Commission proceeding. I will say unless I'm  
2 corrected, I don't think the Michigan Public Service  
3 Commission is even fully back in person full time. So I  
4 think at least for now, given the cost and uncertainty at  
5 least for flying in out-of-state witnesses, that we would  
6 prefer the virtual nature of the hearings and potential  
7 settlement.

8 JUDGE TALBOT: Thank you.

9 All right. Mr. Campbell, I think you  
10 started.

11 MR. CAMPBELL: Yes, Your Honor. I  
12 think just suffice to say we would echo those sentiments.  
13 And while we don't have any objection to an in-person  
14 hearing in terms of witness availability, I know in  
15 putting together the case schedule for this proceeding,  
16 our witness had some availability issues, and as such, we  
17 would just request that if there is going to be an  
18 in-person hearing, that there be flexibility for a virtual  
19 participation option for witnesses to, I guess, facilitate  
20 the accessibility for him and to -- for the other party  
21 witnesses that might have travel issues.

22 JUDGE TALBOT: All right. Thank you.

23 Anyone else?

24 MR. ABRAMS: Yes, Your Honor. I won't  
25 belabor the points made by everyone else, I think good

1 points, and generally speaking, we support in-person  
2 hearings. Just when negotiating this schedule, I guess it  
3 wasn't clear to me that the intention was to do it in  
4 person, so also did not sort of coordinate that with my  
5 witness. Generally speaking, CEO support and believe in  
6 the value of in-person hearings.

7 JUDGE TALBOT: Thank you.

8 Anybody else? Go ahead.

9 MR. WOLLENZIEN: Yep, for the Attorney  
10 General here, I echo the sentiments many others raised. I  
11 don't believe there's any issue for us, for attorney  
12 staffing, for me to appear in person under the schedule,  
13 though, like I said, I can't confirm at this time  
14 necessarily whether our witness will be able to appear in  
15 person given his schedule.

16 So I, to the extent possible, prefer to  
17 have some flexibility that he might be able to appear  
18 virtually, if necessary, in the proceeding.

19 JUDGE TALBOT: All right. Thank you.

20 Anybody else, or any response from the  
21 Company, or anybody want to reply to each other?

22 All right. Well, hearing none, I'm  
23 going to rule on the record. I don't find good cause has  
24 been established. And while the Commission's order did  
25 leave the discretion up to me on how to proceed, I believe

1           that our department's policy is pretty clear that these --  
2           I mean remote hearings are the default unless there is  
3           some kind of a problem.

4                           And in this case, frankly, the problem  
5           is the reverse in that because we're trying to set up an  
6           in-person hearing, we're going to have problems with  
7           witnesses being able to appear, and the result will be  
8           some kind of hybrid hearing which, really, the idea is to  
9           avoid those because that's where more technical glitches  
10          occur, frankly, is in those hybrid hearings.

11                           So while the Commission may have given  
12          me discretion, I'm not sure that I have discretion under  
13          MOAHR's policy. However, having said that, I don't find a  
14          good reason in this case to order an in-person  
15          cross-examination.

16                           The parties are in settlement  
17          negotiations, and we have witnesses from lots of different  
18          places, and famous last words, we haven't any problems  
19          with Microsoft Teams to date. So I am going to deny the  
20          request for an in-person hearing.

21                           So, having said that, that now  
22          facilitates completing the prehearing. It's my  
23          understanding that then there's agreement on a schedule.

24                           Oh, did you have something to say? Go  
25          ahead.

1 MS. UITVLUGT: I just wondered if you  
2 wanted the Company to address the Notice of Hearing  
3 requirements, Your Honor.

4 JUDGE TALBOT: Yes. I'm getting back  
5 to --

6 MS. UITVLUGT: Okay. Sorry.

7 JUDGE TALBOT: -- that. That's exactly  
8 where I'm going. I was going to ask the Company to put on  
9 the record the compliance with notice for this hearing. I  
10 probably should have done that before I heard the motion.  
11 But go ahead.

12 MS. UITVLUGT: Yes, Your Honor. I  
13 apologize for jumping ahead.

14 Pursuant to the directives from the  
15 Commission's Executive Secretary, the Company caused to be  
16 mailed a Notice of Hearing to the parties in its previous  
17 -- or its general electric rate case, Case No. U-21585,  
18 along -- as well as those participants who requested a  
19 contested case in this case, which is Case No. 21859.

20 Additionally, the Notice of Hearing was  
21 published in newspapers of general circulation in the  
22 Company's electric service territory. These actions were  
23 accomplished by April 2nd, as directed by the Executive  
24 Secretary, and proofs of that have been filed and uploaded  
25 to the Commission's web page.

1 I believe also copies of the Company's  
2 filing were served on all parties that intervened in this  
3 case, and a proof of service indicating as such was also  
4 filed to the E-docket.

5 JUDGE TALBOT: All right. Thank you  
6 very much.

7 Does Staff agree that that complies  
8 with the Executive Secretary's directive?

9 MR. SINGH: Yes, Your Honor.

10 JUDGE TALBOT: Thank you.

11 All right. So then we have several  
12 Petitions to Intervene, and I'm going to rule on all of  
13 them because I don't -- it does not appear to me that in  
14 the Commission's order, that they ruled on any of the  
15 Petitions to Intervene. So to make sure that that is  
16 addressed, I'm going to rule on all of them -- or ask if  
17 anybody has an objection on all of them.

18 So let me start with the Data Center  
19 Coalition. Is there any objection to the intervention of  
20 that entity?

21 Okay. Hearing none, their intervention  
22 is granted.

23 How about Association of Businesses  
24 Advocating Tariff Equity, any objection to their  
25 intervention?

1 All right. Hearing none, their  
2 intervention is granted.

3 The Attorney General's intervention is  
4 acknowledged.

5 Then I have MSNC. Any objection to  
6 their intervention?

7 All right. Hearing none, their  
8 intervention is granted.

9 How about Switch Limited, any  
10 objection?

11 So the intervention for Switch Limited  
12 is granted.

13 How about CEO, any objection to that?

14 All right. Hearing none, the  
15 intervention for CEO is granted.

16 How about MEIBC, any objection?

17 All right. Hearing none, then  
18 intervention for MEIBC is also granted.

19 I guess we also have one motion to --  
20 for pro hac vice from Mr. Vijaykar. I know I said it  
21 wrong again. Any objection to that motion?

22 All right. So hearing none, that  
23 intervention -- I'll issue an order acknowledging that,  
24 assuming all the paperwork is in order. I think it was.

25 All right. So I think at this point,

1 we can address the schedule. So anybody want to volunteer  
2 to put that on the record? We've had several -- a lot of  
3 input on it.

4 All right. I'll pick on Staff. Will  
5 you put the schedule on the record.

6 MR. SINGH: Yes, Your Honor.

7 JUDGE TALBOT: Proposed schedule.

8 MR. SINGH: So what I have is initial  
9 testimony, the initial filing will be Thursday, June 12th,  
10 2025; with a rebuttal filing set for July 9th, 2025; and  
11 if I followed the cross-exam discussions accurately,  
12 there's three dates, July 29th, August 1st, and August  
13 4th.

14 Initial briefs will then be set for  
15 August 21st, with reply briefs for September 16th, with an  
16 order date target set for October 9th.

17 JUDGE TALBOT: All right. And  
18 discovery turnaround, did you guys discuss that?

19 MR. SINGH: I believe, and the parties  
20 can correct me if I'm wrong, but I believe we are  
21 considering eight days, eight business days, I believe, up  
22 until the initial filing, and three days thereafter up  
23 until the rebuttal filing. Excuse me. No, up until the  
24 initial filing. That's what I have.

25 JUDGE TALBOT: That would be June 12th,

1 the initial filing?

2 MR. SINGH: Yes.

3 JUDGE TALBOT: Okay. Just want to make  
4 sure.

5 All right. Thank you very much. Any  
6 objection to that schedule? And I have ruled that it will  
7 be by Microsoft Teams.

8 All right. Hearing no objection, that  
9 schedule is set. I'll get out a scheduling memo hopefully  
10 by the end of the day.

11 I think at this point, we've covered  
12 everything for the standard prehearing. We do have the  
13 motion in a few minutes, but anybody have anything else  
14 that they want to discuss before we get to the motion?  
15 Please, just speak up. All right.

16 MR. BZDOK: Two clarifying questions.  
17 So, first, on the recitation of the discovery turnarounds,  
18 I believe the three days, is it three business days; is  
19 that right? The three days after June 12th. Someone  
20 correct me if I'm wrong. I think that's my understanding.

21 And then there have been some different  
22 discussions about settlement conference dates, and I don't  
23 know that that's officially part of this schedule, but I'm  
24 looking at an e-mail that has one date, but I know there  
25 was also discussion of two dates, and it might be good to

1 get that nailed down, either whether that's on the record  
2 or after we go off the record, just to make sure that I  
3 have the correct dates.

4 JUDGE TALBOT: All right. So first of  
5 all, I didn't have the three days after the June 12th. Is  
6 that correct? Is that -- anybody object to that?

7 All right. So then I'll make sure  
8 that's in the scheduling memo.

9 Now, to the settlement conference, I  
10 don't think I have any problem addressing that. Is there  
11 any input on the date? It appears on here, it says May  
12 14th, but -- on the proposed schedule.

13 I'm sorry. It's not in the record.  
14 You sent a proposed schedule, and there was a May 14th  
15 date. So does that not work for some people?

16 MS. UITVLUGT: Your Honor, Consumers  
17 Energy additionally proposed a May 7th date to allow for  
18 two scheduled settlement conferences off the bat, and we  
19 would agree with the May 14 date.

20 JUDGE TALBOT: All right. Anybody  
21 object to having two settlement conferences on the 7th and  
22 14th?

23 All right. I mean I can -- if you -- I  
24 normally would not, but I can put it in the scheduling  
25 memo if you guys want me to do that. Somebody have an

1 objection to that?

2 Okay. I will not -- go ahead.

3 MR. BZDOK: I don't have an objection.  
4 I had -- there was also -- there was a May 6 date. Are we  
5 -- just confirming it's May 7 and not May 6. It's  
6 possible I just miscalendared it.

7 MS. UITVLUGT: I misspoke.

8 MR. VIJAYKAR: I also had it as May  
9 6th, but we're flexible on those two dates.

10 MS. UITVLUGT: I also had it as May 6,  
11 which means I misspoke.

12 JUDGE TALBOT: Okay. That's why I  
13 write in pencil. All right. So May 6th and May 14th for  
14 the settlement conferences. Any problems with that?  
15 Speak up. All right.

16 MS. BRADER: Your Honor, just want to  
17 clarify if your order will have an in-person, or not, note  
18 on the settlement conference, and if so, if that will  
19 apply solely to counsel or also to a client  
20 representative.

21 MR. BZDOK: I think the Commission  
22 explicitly rejected that request in the order.

23 JUDGE TALBOT: Which request? I'm  
24 sorry. Clarify that statement a little bit, Mr. Bzdok.

25 MR. BZDOK: Didn't the order

1 specifically reject the order for in-person settlement  
2 conferences?

3 JUDGE TALBOT: I have to be honest with  
4 you, I normally wouldn't address the settlement  
5 conference, and my reaction is that it's not really a  
6 hearing under the policy that I quoted before where there  
7 has to be a showing of good cause.

8 I think it would probably be most  
9 efficacious for me to just leave it to the parties. But I  
10 have to be honest with you, I'm going to have to go back  
11 and look at the order to see if it specifically addresses  
12 the settlement conference.

13 MS. BRADER: I don't have a problem  
14 with it being left to the parties. I just wanted clarity  
15 on what the order would likely state.

16 MR. WOLLENZIEN: Your Honor, Mr. Bzdok  
17 is correct, but the -- what the order said was, and let me  
18 get it here now, the Commission declines to approve  
19 Consumers' request to direct the parties to meet in-person  
20 to conduct settlement discussions, refers Consumers  
21 request for in-person evidentiary hearing to the  
22 discussion of the assigned Administrative Law Judge.

23 JUDGE TALBOT: Yeah. So I --

24 MR. WOLLENZIEN: I mean the parties can  
25 agree to meet in person, but the Commission declined to

1 direct them to do so.

2 JUDGE TALBOT: Yes. You're right. I'm  
3 seeing it right here. So I think I can -- I will -- if  
4 you want me to put an asterisk on it or footnote or  
5 something, I leave it to the discretion of the parties as  
6 to how to conduct the settlement conference.

7 Does anybody have a problem with that?  
8 Speak up and make your argument.

9 All right. Like I said, that's just  
10 not something I normally consider. So a little excitement  
11 this morning.

12 All right. Anything else? Speak up,  
13 like I said.

14 All right. Does anybody want to take a  
15 quick break before we go into the motion, five or ten  
16 minutes, or do you want to just keep going?

17 Actually, I'm going to make an  
18 executive decision. We're going to take a five-minute  
19 break. We're off the record.

20 (At 10:12 AM, recess was taken)

21 (At 10:21 AM, proceedings resume)

22 JUDGE TALBOT: We're back on record in  
23 Michigan Public Service Case U-21859. This is the time  
24 set to hear oral arguments on the Consumers Energy's  
25 motion in limine.

1                   So we're going to start with the  
2                   Company, and then several parties responded in writing,  
3                   and MEIU has indicated that they want to provide oral  
4                   argument only, so we'll just take each party kind of as it  
5                   comes.

6                   So we're going to start with the  
7                   Company. So go ahead.

8                   MS. UITVLUGT: Thank you, Your Honor.

9                   I understand that you've seen the  
10                  motions and the responses that are filed, and as such, I  
11                  intend to keep my argument brief.

12                 Additionally, while Consumers Energy  
13                  maintains that the scope of this proceeding should be  
14                  limited to matters that are directly relevant to our  
15                  proposed tariff modifications, after further  
16                  consideration, Consumers Energy is no longer seeking an  
17                  order to exclude evidence regarding the development of a  
18                  new rate for these large customers or data centers.

19                 However, Consumers Energy does continue  
20                  to seek a ruling directing that the following issues be  
21                  excluded as irrelevant or outside of the scope of this  
22                  proceeding, and ask that parties would be prohibited from  
23                  offering evidence on the following issues; whether  
24                  Consumers Energy should serve data customer load; the  
25                  impact data customers have on other utility requirements,

1           such as compliance with the clean energy standard or the  
2           renewable energy credit standard, and the requirements for  
3           data centers to meet a sales -- the Michigan sales tax  
4           exemption.

5                           To that point, every case filed by  
6           Consumers Energy should not open it up to every possible  
7           interest of every -- every participating party. Consumers  
8           Energy maintains that a scope of the case should be  
9           defined by the case that is filed.

10                           In saying this, the Company is not  
11           arguing that the Commission has limited jurisdiction to  
12           consider issues that could arise around data centers.  
13           Instead, the Company is maintaining that all of these  
14           issues related to the variety of topics that could be  
15           raised by data centers should not be litigated here.

16                           In this case, the Company filed a  
17           limited application requesting certain modifications to  
18           its GPD tariff. These modifications were proposed as  
19           customer safeguards due to data centers expressing  
20           interest in taking service in Consumers Energy's service  
21           territory.

22                           The Company fully recognizes that the  
23           Commission ordered a full and complete hearing on these  
24           safeguards, and this is not an attempt to prevent that  
25           hearing from taking place.

1                   In proposing its customer safeguards,  
2 Consumers Energy recognizes that it has a duty to serve  
3 any customer that requests service within its territory,  
4 and this is regardless of the impact that potential  
5 customer could have on compliance with other statutory  
6 provisions.

7                   Absent the Company filing this  
8 application, any customer, any large customer, any data  
9 center -- well, any data center customer would take  
10 service under rate GPD. If the data center customer  
11 wanted to take service today, that would be the rate that  
12 it would go on to. Absent this proceeding, during the  
13 course of this proceeding, that is the best rate that is  
14 currently available to them.

15                  If the Company did not file for its  
16 modifications to rate GPD, a number of the issues raised  
17 by the parties in this case would be addressed and are  
18 being addressed in different proceedings. And these  
19 proceedings are more appropriate for the interests that  
20 are claimed.

21                  For example, the Company had an ongoing  
22 renewable energy plan proceeding, Case No. U-21816. This  
23 is the proceeding where Consumers Energy has presented its  
24 plan to comply with Act 235 in meeting the renewable  
25 energy credit standard, and this is the case that that is

1           being discussed.

2                                 In this case, that is where you would  
3 discuss the impact of sales growth from data centers or  
4 any other large customer and what that impact of sales  
5 growth would have on Consumers Energy's ability to comply  
6 with Act 235. And there's no doubt that this would be the  
7 proper proceeding to discuss the Company's ability to  
8 comply with Act 235.

9                                 In the different Petitions to Intervene  
10 in this case, parties have expressed interest with the  
11 Company's ability to comply with Act 235. It should be  
12 noted that many of the parties that expressed that  
13 interest are already participating in the Company's  
14 renewable energy plan; ABATE, the Attorney General, MNSC,  
15 the Clean Energy Organizations, to name a few.

16                                 In the Company's renewable energy plan,  
17 issues have already been raised regarding the  
18 reasonableness of incorporating growth into the Company's  
19 sales forecast, and it should be noted that under Act 235,  
20 the Commission will enter -- or issue an order addressing  
21 this issue and the Company's renewable energy plan 300  
22 days from the filing of the Company's application.

23                                 That means that the Commission will  
24 issue an order addressing the Company's ability to comply  
25 with Act 235 standards by September 11 of this year, which

1 is before the filing of reply briefs in this case.

2 The Company believes that it is not  
3 appropriate to address these issues in this case for two  
4 reasons. One, it's already being discussed in another  
5 proceeding. And, two, it is outside of the scope of what  
6 the Company has already requested, which was certain  
7 modifications to a tariff.

8 The Company also has other upcoming  
9 filings that it is required to make that would address the  
10 interests of different parties that were raised here, and  
11 those filings are going to occur irrespective of what  
12 happens in this case.

13 For example, the Company is required to  
14 file its biannual green -- voluntary green pricing case  
15 early this fall. It's either September or October of this  
16 year. That case would be the proceeding to discuss data  
17 centers or any large customers' use of voluntary green  
18 pricing programs, and in the case of data centers, whether  
19 those VGP programs would meet the requirements of the  
20 sales tax exemptions specified in MCL 205.54(e)(e), which  
21 express -- explicitly references the use of VGP programs  
22 for compliance.

23 One of the parties to this proceeding  
24 has expressed interest in their -- in their filings to  
25 submit testimony advocating for the use of the Company's

1 VGP programs to ensure that data centers come online with  
2 the proper energy mix. However, by the time the  
3 Commission issues an order in this case, the Company's VGP  
4 case would already be filed, so if the Commission ordered  
5 the Company to include it in the case, the case has  
6 already commenced.

7 The Company believes that its VGP case  
8 is already set up as being the appropriate place to talk  
9 about VGP programs and whether those offerings are  
10 available to all customers, which would include data  
11 centers.

12 Similarly, regarding matters of  
13 compliance with the clean energy standards and the  
14 resource planning, that's going to occur in the Company's  
15 integrated resource plan, which I believe is being filed  
16 in 2026.

17 Absent the Company's filing for these  
18 tariff modifications, each one of these issues would have  
19 been had -- or would have been or had the opportunity to  
20 be raised in each one of these cases, and these are the  
21 more appropriate place to discuss these as it provides a  
22 more comprehensive picture of the Company's plans and how  
23 it's planning to meet the objections necessary.

24 The Company's filing for a tariff  
25 modification does not -- related to data centers does not

1 trigger a proceeding that should address all of these  
2 topics, nor are all of these topics relevant to what the  
3 Company has requested in this case.

4 Therefore, Your Honor, this is why the  
5 Company is seeking an order in limine to exclude the  
6 issues of the impact of data centers on the other utility  
7 requirements, and the requirements for data centers to  
8 meet Michigan sales tax exemptions, as well as whether the  
9 Company should serve data center load generally should be  
10 excluded from evidence in this proceeding. Thank you.

11 JUDGE TALBOT: All right. Thank you  
12 very much.

13 Like I said, there's other parties who  
14 have responded in writing. Does anybody want to volunteer  
15 to go next?

16 All right. I will pick the Attorney  
17 General. Luke.

18 Mr. Wollenzien, you're not coming  
19 through. I'm not hearing you.

20 MR. BZDOK: Luke, do you want me to go  
21 while you work that out?

22 JUDGE TALBOT: Okay. We'll go with  
23 MNSC. Am I right? Did I have that right?

24 MR. BZDOK: Yes, MNSC.

25 JUDGE TALBOT: Go ahead, Mr. Bzdok.

1 MR. BZDOK: Thank you, Your Honor.

2 I appreciate Ms. Uitvlugt's comments.

3 I want to respond to just a few of them. I first want to  
4 adopt and incorporate by reference the Attorney General's  
5 excellent discussion of procedural flaws with this motion,  
6 and I won't get into that. I expect that he -- that Luke  
7 will. But I just -- we agree a hundred percent and  
8 incorporate all of those arguments as to why this is not  
9 an appropriate motion, and this motion is  
10 mischaracterizing what it's attempting to do.

11 I appreciate also the Company taking  
12 the position of the rate off the table, so to speak, as  
13 opposed to being in controversy today, new rate for data  
14 center customers.

15 I do want to speak to this question of  
16 the Sales and Use Tax Exemption Statute. The -- when the  
17 -- when the Company filed this case, that law was not in  
18 effect yet. But it is in effect -- well, it's in effect,  
19 I think, beginning tomorrow. And so it will be -- it is  
20 live during the pendency of this case.

21 That statute has mandatory  
22 requirements. It requires the Company to identify and  
23 develop, if necessary, tariffs, contracts, and other  
24 mechanisms to ensure compliance with certain key elements  
25 that are required for enterprise data centers to meet

1 those sales and use tax exemptions.

2 So I do agree that, ultimately, the  
3 determination of whether the data centers are in  
4 compliance will be made by a different state agency, but  
5 there is a mandatory statutory obligation to identify and,  
6 if necessary, develop key elements, including tariffs and  
7 including contracts, to satisfy certain provisions of that  
8 statute. That's not optional. That can't be deferred.  
9 That can't be, you know, kicked to later.

10 Consumers is saying, and I take them at  
11 their word, these data centers are coming, we're going to  
12 be signing contracts, so I don't understand the argument  
13 that let's wait until we file our IRP in 2026 and then get  
14 it decided in 2027 to address these issues. Either time  
15 is -- is urgent or it's not. That's the first point.

16 The second point is the Company has not  
17 identified any such contracts, tariffs, or mechanisms in  
18 the context of this case to ensure compliance with those  
19 requirements. And so I do think those are live issues,  
20 and the Company needs to do so, and we can do discovery  
21 around that, but we can only do discovery around that if  
22 the motion for limine on those issues is denied;  
23 otherwise, we'll be prevented from even discovering what  
24 Consumers has in mind to meet the obligations of that  
25 statute, which is -- which is binding and which is

1           operative as of tomorrow.

2                           The other requirement, which we  
3           identified in our response, is there are certain  
4           requirements having to do with nonsubsidization by  
5           residential customers of costs associated with these  
6           facilities, and that is absolutely 100 percent solely  
7           within the Commission's purview. And if that -- you know,  
8           that has to be addressed in this case. If it's not going  
9           to be addressed in this case, Consumers has not identified  
10          any other case in which it will be addressed.

11                          That's not going to be addressed in the  
12          VGP case. That's not going to be addressed in the IRP  
13          case in 2026 and 2027. That has to be addressed in this  
14          case. There are two different nonsubsidization -- or  
15          prohibitions on subsidization, which is a major issue and  
16          concern for consumer advocates across the state when it  
17          comes to these data centers.

18                          So, and then, as I mentioned, the --  
19          the compliance requirements for -- for the procurement of  
20          90 percent clean energy, that's the other piece that needs  
21          to be in this case, because that's a mandatory requirement  
22          of statute as well.

23                          So I know there are a lot of people  
24          that want to talk today, so I'm going to stop there.

25                          JUDGE TALBOT: All right. Thank you

1 very much.

2 Anybody? Hi. Go ahead,  
3 Mr. Wollenzien. We still don't hear you. Could you plug  
4 something in maybe? We're not hearing you.

5 MR. VIJAYKAR: Perhaps your computer is  
6 muted. Not just the app.

7 JUDGE TALBOT: Well, you can mess  
8 around with it some more. Does a different party want to  
9 go?

10 Go ahead, Mr. Abrams.

11 MR. ABRAMS: Thank you, Your Honor.

12 All parties agree this is an issue of  
13 significance and public policy, and all that remains is a  
14 question of scope and the proper forum to address the  
15 issues implicated by low growth related to data centers.

16 Those issues include cost allocation,  
17 rate design, and most importantly to the CEO, the state's  
18 clean energy rules and the Company's efforts to  
19 decarbonize.

20 With its motion, the Company  
21 essentially attempts to relitigate the Commission's denial  
22 of its ex parte application. While the Commission order  
23 did not give us a lot, it expressly based this decision on  
24 petitions of intervenors, all of whom object to this  
25 motion. Consumers' motion should be denied because its

1 application and the Company testimony implicates the  
2 issues it attempts to exclude.

3 I'll note that we also appreciate the  
4 Company taking the new rate for data centers off the  
5 table, but the issue of cost impacts necessarily raises  
6 important implications for the Company's ability to comply  
7 with its renewable portfolio standards.

8 And I know that Ms. Uitvlugt mentioned  
9 the VGP case coming up, but terms and conditions  
10 associated with taking service could include the VGP  
11 program, and we'd like to be able to ask the Company  
12 questions about that, as well as put testimony in on it.

13 It is vital to get this right now  
14 before these customers take service. That's why the  
15 Commission ordered a contested case. Dealing with this  
16 piecemeal across a number of different proceedings is not  
17 the best way to deal with how Consumers will address data  
18 centers, and that's why you should reject the Company's  
19 motion. Thank you.

20 JUDGE TALBOT: All right. Thank you.  
21 Want to try again, Mr. Wollenzien?

22 MR. WOLLENZIEN: Third time is a charm.  
23 I'm on my phone. Can you hear me now?

24 JUDGE TALBOT: Yes, we can hear you.

25 MR. WOLLENZIEN: Awesome. Thank you.

1 I don't know what's going on. You go on break, you come  
2 back, your microphone doesn't work. I don't know what's  
3 going on, but thank you for accommodating me and your  
4 patience here.

5 And I'll probably be reiterating some  
6 things that have been said by the other parties who have  
7 spoken, the responding parties who have spoken already.  
8 I'll try not to take up too much time retreading all the  
9 arguments from our response, but I did want to reiterate a  
10 couple of those arguments here.

11 The Attorney General's response  
12 addresses really three main categories of defects in the  
13 Company's motion. Those are procedural defects, defects  
14 in requested relief, and defects in the Company's analysis  
15 on relevance and admissibility.

16 The procedural defects are probably the  
17 easiest to address. Without any evidentiary record or  
18 witness testimony for them to point to, there's simply no  
19 -- simply no way for the Company to bring a motion in  
20 limine now without it being premature. Likewise, they'll  
21 have many other opportunities in this proceeding to make  
22 the same arguments.

23 Denial of motion in limine on this  
24 basis appears to be a long-standing practice in matters  
25 before the MPSC, as evidenced by the reasoning expressed

1 in Case U-21089 denying another motion in the same  
2 context, as identified in our response. Also raised in  
3 our response, the motion's sweeping scope of relief is  
4 tantamount to a disguised dispositive motion, and courts  
5 in Michigan have repeatedly found this is a basis for  
6 denying misidentified motions in limine.

7 As a second category of defects in the  
8 Company's motion, the relief requested by Consumers is too  
9 broad, vague, and self-contradictory, if granted here.  
10 And so record has been developed. The Company can't  
11 identify any discrete evidentiary points of challenge as  
12 is required when seeking relief through a motion in  
13 limine.

14 Further, several points in its request  
15 for relief actually contradict one another. The Company  
16 seeks to include -- sorry, seeks to exclude consideration  
17 of PA 235 and its actions under this statute despite the  
18 fact that these statutes involve the very cost  
19 implications that the Company also request to be included  
20 in the scope of the proceeding.

21 And in its application, the Company  
22 states that it currently has 15 gigawatts in data center  
23 load in its economic development pipeline. That  
24 additional amount is roughly twice Consumers' current peak  
25 load of 7.6 gigawatts, as identified in the last rate

1 case -- last electric rate case, I should say.

2 The addition of that 15 gigawatts will  
3 necessarily entail an increased cost of compliance to  
4 achieve PA 235's clean renewable energy requirements,  
5 which, in turn, is a percentage of retail sales.

6 Also included among the impacts data  
7 center loads could cause would be the effects and cost of  
8 failure to mitigate climate change through achievement of  
9 the clean renewable energy requirements, including, for  
10 example, costs associated with extreme weather response  
11 and system hardening, as has been previously acknowledged  
12 by both the Commission and by the Company itself.

13 I believe the Company today has pulled  
14 back from consideration their motion's request to exclude  
15 the topic of new rate for data centers, so I'm not going  
16 to talk about that.

17 But as to the third category of  
18 defects, the Company's motion also fails on its relevance  
19 arguments. Cost related to clean renewable energy  
20 requirements are relevant as they fall squarely within the  
21 impacts that should be considered from new data center  
22 loads when evaluating tariff provisions for those  
23 customers, such as the Company has asked to be considered  
24 in this proceeding.

25 This includes the tax exemption statute

1 at issue which, for example, has a section that explicitly  
2 contemplates tariff provisions for data center customers.

3 Further, and as addressed throughout  
4 the Attorney General's response, the Commission's order  
5 directing a contested proceeding acknowledged that it had  
6 considered the intervenors' briefings in denying ex parte  
7 relief. By the Company's own argument that the topics and  
8 pleadings are relevant, the issues raised in the Attorney  
9 General's petition also qualify for consideration. The  
10 Commission's order, likewise, does not narrow the scope of  
11 the proceeding as requested by Consumers here.

12 And just one last point, Your Honor.  
13 The Company opened here today by arguing that every case  
14 filing the Company makes should not be open -- should not  
15 open the Company up to other subjects that might be raised  
16 by intervenors. However, they then immediately cite to  
17 their renewable energy plan case.

18 Your Honor, the Company's renewable  
19 energy plan case, their application in that case, does not  
20 include considerations related to tariff provisions for  
21 data center customers. In fact, its description of data  
22 center load in that case refers to an entirely different  
23 rate, not to any data center specific tariff provisions  
24 and related considerations. It's raised its consideration  
25 in this case, and this case is appropriate for addressing

1 those considerations.

2 For these reasons, and the others  
3 stated and set forth in the Attorney General's response,  
4 the Attorney General requests that the Company's motion in  
5 limine be denied. Thank you.

6 JUDGE TALBOT: All right. Thank you.

7 All right. Anybody volunteer to go  
8 next?

9 MR. VIJAYKAR: Your Honor, we were the  
10 only other party, I think, to submit a response to the  
11 motion. This is Nick Vijaykar on behalf of the Data  
12 Center Coalition.

13 JUDGE TALBOT: Go ahead.

14 MR. VIJAYKAR: And we would largely  
15 rest on our filed response. We don't object to an order  
16 limiting the scope of the proceeding. We did object to  
17 the specific relief that the Company requested in its  
18 motion.

19 We certainly agree that the lawfulness  
20 and necessity and reasonableness of the Company's  
21 modifications to rate GPD are in scope here, and that's  
22 how we would frame discovery of this proceeding if there  
23 were an order limiting the scope of this proceeding.

24 Again, I think parties' comments this  
25 morning highlight that there are many pending and upcoming

1 proceedings in which some of the important issues that  
2 intervenors have raised may be addressed. So I think  
3 we're sensitive to the idea that in order for this  
4 proceeding to be as efficient as possible and to  
5 proceed -- for record development to proceed in an  
6 efficient way over the course of the next, I think, three  
7 months that we have now, it may be helpful to get some  
8 guidance from the Commission and from Your Honor that  
9 prescribes the scope of this proceeding.

10 Beyond offering that, we have -- we  
11 have no other comments on the motion, and I wouldn't  
12 object to an order limiting the scope of this proceeding.

13 JUDGE TALBOT: All right. Thank you  
14 very much.

15 And then we have oral argument by MEIU?

16 MS. CHAPPELLE: Thank you, Your Honor.  
17 Laura Chappelle on behalf of MEIU.

18 We would object to any limitation of  
19 the scope of this proceeding, and in that regard, we do  
20 agree to those arguments and positions from the Attorney  
21 General, CEO, and MNSC.

22 I'll just note two items. First, to my  
23 knowledge, this is essentially a case of first impression.  
24 I believe that this will be the first contested case on a  
25 new tariff for large customer load, data centers, and so I

1 do believe this being such a case of first impression, it  
2 should be certainly an argument to keep this proceeding  
3 broad, not to limit it.

4 Secondly, I'll just say that we  
5 disagree with the Company's position cited in their motion  
6 on page 2 that, quote, this case does not evoke -- invoke  
7 the Commission's general ratemaking authority under MCL  
8 460.552 and MCL 460.54, and 6(a) and related statutes,  
9 unquote.

10 The Commission's order itself, in -- in  
11 turning this case into a contested case proceeding, on  
12 page 3, cites MCL 460.6(a) as one of their statutory  
13 references for the importance of this case and turning it  
14 into a contested case. The Commission stated in part,  
15 "The electric load of new data centers presents unique and  
16 significant cost implications, and the development of an  
17 evidentiary record to consider the February 7th  
18 application is prudent and reasonable," again citing --  
19 citing that 6(a), subsection 3, reference.

20 So we believe that any attempt, at  
21 least at this juncture, to limit the scope of these  
22 proceedings is improper, and it should be kept as an open,  
23 contested case. Thank you.

24 JUDGE TALBOT: All right. Thank you.

25 I will allow brief back and forth, so

1 any response? Oh, go ahead, Mr. Campbell.

2 MR. CAMPBELL: Thank you, Your Honor.  
3 ABATE filed a response to the motion as well, if I could  
4 just address that.

5 Our response is limited to the  
6 Company's attempt to exclude evidence regarding the  
7 development of a new rate for data centers. It's my  
8 understanding, based on Consumers' counsel's comments this  
9 morning, that they're no longer seeking to exclude  
10 evidence regarding the development of a new rate for data  
11 centers, so I think our response is generally addressed  
12 through their withdrawal.

13 JUDGE TALBOT: All right. Thank you.  
14 Now any response from anybody?  
15 Company? Brief.

16 All right. I'm hearing -- go ahead.

17 MS. UITVLUGT: I'll go very, very, very  
18 briefly, Your Honor. I just wanted to address a couple of  
19 statements that were made.

20 With respect to MNSC's counsel, they  
21 indicated that the nonsubsidization of rates for customers  
22 would not occur in an IRP case. Consumers Energy agrees.  
23 However, Consumers Energy regularly files an electric rate  
24 case which definitely discusses the issue of rate  
25 subsidization and the impact of customers, and in that

1 case, you would have a full and complete hearing with a  
2 full cost of service study and rate design in order to  
3 evaluate the issues of subsidization.

4 With respect to the arguments made  
5 regarding cost implications, Consumers Energy takes the  
6 position that those cost implications are related not  
7 necessarily -- that the Commission was discussing was not  
8 necessarily related to the cost associated with its  
9 renewable energy plan and compliance with the renewable  
10 energy plan standard, as those are currently being  
11 litigated in the Company's renewable energy plan case.

12 Any sales growth related to data  
13 centers or any other large customer would have been  
14 incorporated in the sales forecast in that case, and the  
15 related costs are being examined based on the need of  
16 resources or PPAs the Company needs to enter into in order  
17 to meet compliance. This is why the Company is asking to  
18 exclude those issues in this case as it -- in this case as  
19 it's directly being discussed in another proceeding.

20 I would also note that while the  
21 Attorney General points to the fact that no evidentiary  
22 record has been established in this case, therefore, the  
23 Company's motion is too premature, a number of the parties  
24 have directly implicated and said in their Petitions to  
25 Intervene what they intend to discuss and what they intend

1 to file testimony on.

2 The Company filed this motion at this  
3 stage in the case based on the short timeframes in order  
4 to discuss its tariff modifications and the interest  
5 expressly discussed by these parties. This isn't coming  
6 from the Company broadly just wanting to foreclose those  
7 issues prematurely. Thank you.

8 JUDGE TALBOT: All right. Thank you.

9 Again, brief, but anybody else want to  
10 respond?

11 All right. Well, hearing none, I am  
12 going to rule on the motion. And first of all, I do  
13 appreciate you narrowing -- the Company narrowing the  
14 things that it's requesting to be excluded from four to  
15 three.

16 So I will, first of all, truncate the  
17 idea that the -- the idea that there should be exclusion  
18 of the development of a new rate for the data centers, I'm  
19 going to -- because the Company's withdrawing it, I'm  
20 going to deny exclusion of that issue.

21 And when we look at this, this is a  
22 motion in limine, and a motion in limine is a pretrial  
23 motion that's designed to prohibit references to highly  
24 prejudicial evidence. And I think in this case, the AG  
25 correctly points out that in this case, the motion is

1           premature.

2                           The parties have filed no evidence. We  
3           essentially have no record. And while the Company  
4           indicates that some of the issues raised are going to be  
5           addressed in other cases, that doesn't necessarily  
6           preclude addressing them in the development of this new  
7           data center tariff or rate, and the Company will have  
8           ample opportunity to object to evidence as the record is  
9           developed, so, for example, a motion to strike or  
10          something of that nature. So I find that the premature  
11          nature of the motion is prejudicial to the parties and  
12          really should result in denial.

13                          But I go on to note that in your  
14          written documents, there's a lot of discussion about the  
15          Michigan Rules of Evidence. But in this case, the  
16          Commission has broad discretion. The court of -- I think  
17          it was MSN -- MNSC that pointed out that the Commission  
18          and the Court of Appeals has found that there's broad  
19          discretion. The Commission has broad discretion. And  
20          under the APA and the Commission's rules, the Company may  
21          give probative effect to evidence relied on by reasonable  
22          -- a reasonably prudent person.

23                          And so in this case, as a trier of  
24          fact, I'm very confident the Commission will be able to  
25          effectively evaluate and give appropriate weight to any

1 evidence presented in this case.

2 And so looking at the three issues that  
3 are remaining, first of all, the idea that whether or not  
4 the Company should serve data center load, I find that  
5 that, you know, should not be excluded -- should be  
6 excluded. I'm sorry. And -- because, first of all, I  
7 don't see any party raised it as an issue. But second of  
8 all, the Commission doesn't really have authority to tell  
9 a utility that they can't serve a particular customer, and  
10 the Company pointed out that they have a duty to serve  
11 customers in their service territory.

12 So I find that whether or not they  
13 should serve a data center load should be excluded. And  
14 then, obviously, the development of a new tariff should be  
15 excluded because it's withdrawn.

16 But then we get to the other two issues  
17 of the impact of the data centers on other utility  
18 requirements and the requirements related to the sales tax  
19 exemption. And a lot of the parties brought up the  
20 magnitude of the issue here. And somebody pointed out  
21 that we're talking about up to 15 gigawatts of total new  
22 load, which is twice what a peak load is.

23 And so in this case, the magnitude of  
24 the potential stranded cost, which nobody really addressed  
25 in oral argument but you did address in your written

1 arguments, I think requires a very full and complete  
2 review of all the issues that could potentially relate to  
3 the tariff, as I think Consumers admits that it's  
4 important to get this right because of the uniqueness of  
5 this load and the -- the magnitude of the new additions, I  
6 guess, is the best way to put it.

7 And I want to -- I think the impact  
8 that this is going to have on other utility requirements  
9 and the idea that it's more appropriately addressed in  
10 other cases, again, I don't necessarily see that the fact  
11 that there is some overlap between the cases make it  
12 irrelevant in this case, but also, I find that, I think as  
13 MSN correctly pointed out -- MNSC correctly pointed out  
14 that these programs are addressed in the GPD tariff rate  
15 book, and that if we're going to have a new tariff, that  
16 it should be -- it should address all of the potential  
17 issues.

18 So in this case, I agree that the  
19 compliance with the renewable energy credit standard and  
20 the clean energy standards are part of what should be  
21 looked at in the determination of whether or not a new  
22 tariff or whether the GPD structure should be altered.

23 And in kind of the same light, I find  
24 that the data centers -- that the requirements for data  
25 centers to meet the sales tax exemption are also relevant.

1 And I think it was Mr. Bzdok that pointed out that the  
2 Michigan -- MCL 205.54ee(A) and ee(10)(e)(ix) requires  
3 that the Company support the data centers to show  
4 compliance.

5 So, again, I think the magnitude and  
6 the -- the breadth of what needs to be covered in this  
7 case, along with the fact that the Commission, I think,  
8 specifically indicated that it wanted a complete and full  
9 record of all the issues, I think it would also be  
10 inappropriate to exclude the references to the sales tax  
11 exemptions.

12 So, and it was the Attorney General  
13 that noted that the Commission did not specifically  
14 exclude any of these issues, despite the fact that many of  
15 them, as Consumers notes, were brought up in the motion  
16 concerning ex parte.

17 So in conclusion, I find that the two  
18 remaining issues involving the impact of data centers on  
19 other utility requirements and requirements for data  
20 centers to meet the Michigan sales tax exemption should  
21 not be excluded.

22 Having said that, however, I do see  
23 where some issues related to both of those arguments could  
24 go too far afield, so I would caution the parties to stay  
25 on point with the relationship between these other

1 provisions and the application to data centers  
2 specifically.

3 So accordingly, the motion is granted  
4 in part and denied in part; granted in that the issues to  
5 be excluded should include whether or not the Company  
6 should serve data center load, and because it's withdrawn,  
7 the development of new data center rates, and it's denied  
8 as to exclusion of the other two issues.

9 All right. Thank you all very much.  
10 If there's anything else, please speak up. Otherwise,  
11 I'll get a scheduling memo out today. Well, hopefully out  
12 today.

13 All right. Let's go off the record.

14 (At 11:01 AM, the prehearing and motion  
15 hearing were adjourned until cross-examination on July 29,  
16 2025)

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I, Dawn M. Houghton, CSR-3071, do hereby certify that I reported in stenotype, via Microsoft Teams, the proceedings had in the within-entitled matter, that being Case No. U-21859, before Katherine E. Talbot, Administrative Law Judge with MOAHR, for the Michigan Public Service Commission, Lansing, Michigan, on Wednesday, April 16, 2025; and do further certify that the foregoing transcript, consisting of fifty-two (52) pages, is a true and correct transcript of my stenotype notes.



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My commission expires: 7-17-2023

Dated: April 20, 2025

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