



May 14, 2025

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

Via E-File

RE: MPSC Case No. U-21859

Dear Ms. Felice:

Attached please find the enclosed documents for filing:

- Response to Consumers Energy Company's Application for Leave to Appeal the Ruling on Consumers' Motion In Limine by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, And Citizens Utility Board of Michigan and;
- Proof of Service.

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

Sincerely,

Christopher M. Bzdok
chris@tropospherelegal.com

CC: Parties to Case No. U-21859

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter on the application of
CONSUMERS ENERGY COMPANY
for Ex Parte Approval of Certain Amendments
to Rate GPD

Case No. U-21859

**RESPONSE TO CONSUMERS ENERGY COMPANY'S APPLICATION FOR LEAVE
TO APPEAL THE RULING ON CONSUMERS' MOTION IN LIMINE
BY MICHIGAN ENVIRONMENTAL COUNCIL,
NATURAL RESOURCES DEFENSE COUNCIL,
SIERRA CLUB, AND CITIZENS UTILITY BOARD OF MICHIGAN**

May 14, 2025

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The Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizen Utility Board of Michigan (collectively, “MNSC”) submit this response to Consumers Energy Company’s (“Consumers” or “Company”) application for leave to appeal (“Appeal”) the Administrative Law Judge’s (“ALJ” or “Judge Talbot”) April 16, 2025 Ruling on Consumers’ motion *in limine* (“Motion”). MNSC takes no position on whether the Michigan Public Service Commission (“Commission”) should consider the Appeal under Rule 433, but if the Commission chooses to do so, it should uphold the ALJ’s decision and reject Consumers’ attempt to improperly limit the scope of this proceeding.

I. BACKGROUND

This proceeding concerns tariff terms that would govern Consumers’ electric service to data center customers. These potential customers present a potentially unprecedented amount of load growth, costs, and stranded asset risks for the utility and its existing customers. In its Application materials, Consumers stated that that it has over 15 gigawatts of data center load in its economic development pipeline, which is an “unprecedented volume of requests and potential load growth for a relatively new industry.”¹ This is roughly twice as much load as Consumers’ current peak load of 7.6 GW.² As Consumers’ witness Laura M. Connolly explained in her testimony accompanying the Application, data centers are “often massive, energy intensive facilities that require large capital investments on the part of the utility, . . . require a high level of demand” 24/7/365, and pose a significant stranded asset risk to the utility’s other customers.³

¹ Direct Testimony of Company Witness Laura M. Connolly, p. 4.

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

³ Connolly Direct, p. 4.

Consumers initially requested *ex parte* approval of its proposal to modify Rate GPD to serve data center customers. After MNSC and other intervenors raised concerns about the sufficiency of Consumers’ proposal, the Commission ordered a contested case proceeding in this matter. In its Order opening a contested case proceeding, the Commission noted that “[t]he electric load of new data centers presents unique and significant cost implications, and the development of an evidentiary record to consider the February 7 application is prudent and reasonable.”⁴

Consumers then filed a motion *in limine*, in which it sought to substantially restrict the focus of the contested case in ways that would foreclose the parties from presenting, and the Commission from considering, facts and legal arguments that are plainly relevant to the reasonableness and adequacy of the Company’s proposal. In its Motion, Consumers sought to exclude the following issues: (1) whether Consumers has a duty to serve data center load, (2) the development of a new rate for data centers, (3) the requirements for data centers to meet a Michigan sales tax exemption, and (4) the impact of data centers on other utility requirements, including those pertaining to renewable energy credits and clean energy.

Judge Talbot excluded one of those issues—whether Consumers has a duty to serve data center load—which she noted no party had raised.⁵ At oral argument, Consumers withdrew its request to exclude the issue of the development of a new rate for data centers.⁶ After consideration of Consumers’ Motion, intervenors’ responses, and oral argument, Judge Talbot denied Consumers’ Motion as to the final two issues and held that evidence pertaining to those issues

⁴ Case No. U-21859, Order, March 13, 2025, p. 3.

⁵ Prehearing and Motion in Limine Oral Argument, 1 Tr 48. In its response to Consumers’ Motion, MNSC stated: “MNSC does not argue that Consumers’ duty to serve is at issue in this proceeding. However, MNSC requests that the Commission allow evidence and argument that Consumers should only serve data center load subject to a sufficiently protective tariff.” MNSC Response to Motion, p. 2.

⁶ Prehearing and Motion in Limine Oral Argument, 1 Tr 25.

should not be excluded, while also cautioning the parties to “stay on point with the relationship between these other provisions and the application to data centers specifically.”⁷

Consumers now seeks leave to appeal that decision. In addition to its initial attempt to proceed *ex parte* and its motion *in limine*, this Appeal represents Consumers’ third attempt to unreasonably abbreviate and limit the scope of this proceeding. MNSC urges the Commission to reject this latest attempt by Consumers so that a full and complete review of all of the issues relevant to applying the Rate GPD tariff to data center load can occur before a potentially unprecedented amount of new load is locked in under that tariff.

II. ARGUMENT

In its Appeal, Consumers repeats its contention that this proceeding should be limited only to “consideration of the amendments to Rate GPD” that the Company itself proposed,⁸ claiming that other relevant issues can be addressed in unspecified future proceedings. The ALJ properly rejected this overly limited approach, and the Commission should do the same. Consumers’ request would prevent the Commission and parties from fully considering the application of Rate GPD to data centers, and the significant and unique implications of data center load on Consumers’ other ratepayers. Consumers’ request is also contrary to the broad jurisdiction the Commission has over the terms and conditions that govern the provision of electric service by public utilities, and Consumers ignores important statutory duties applicable to the Company in its Appeal. Finally, Consumers has failed to support its allegation that the sample discovery questions it attached to its Appeal have caused it any “harm” to the company. As such, if the Commission chooses to consider

⁷ *Id.* at p. 48-51.

⁸ Appeal at 10.

Consumers' Appeal, MNSC respectfully urges the Commission to uphold Judge Talbot's decision below.

A. The Commission Should Consider Tariff Terms Beyond Those Proposed by Consumers in its Application

Consumers' effort to limit the scope of this proceeding to the specific tariff terms it proposed in its Application is not in line with the Commission's Order directing a contested case proceeding. As the Commission recognized, Consumers' Application was proposed "to address what the company has described as 'unique circumstances created by data centers' and to ensure that accommodating the growth attributed to data centers does not create unacceptable risks for the company or its customers."⁹ After reviewing intervenors' motions to intervene and petitions for a contested case hearing—in which intervenors raised many of the topics that Consumers now seeks to exclude—the Commission held that "[t]he electric load of new data centers presents unique and significant cost implications, and the development of an evidentiary record to consider the February 7 application is prudent and reasonable."¹⁰ In order to ensure that accommodating the growth attributed to data centers does not create unacceptable risks for the company or its customers, the Commission should not now limit this proceeding solely to the specific Rate GPD modifications proposed in its Application. Rather, the Commission should allow parties to introduce facts and argument pertaining to other potential Rate GPD modifications, including modifications addressing other utility requirements and statutory obligations.

⁹ Case No. U-21859, Order, March 13, 2025, p. 2.

¹⁰ *Id.* at 3.

Consumers claims that the urgency of addressing its proposed tariff terms weighs in favor of excluding all other issues concerning tariff terms for data center customers,¹¹ but Consumers has not explained why the specific tariff terms that it has proposed are more time sensitive than the tariff-design issues it seeks to exclude. Furthermore, Consumers seems to suggest that granting its motion and limiting this proceeding to its proposed tariff modifications would be harmless,¹² but this is not the case. In its Application, Consumers proposed minimum 15-year contract terms after a negotiated ramp-up period. It is currently unclear whether a data center customer from Rate GPD could or would be transferred to a new data center-specific rate during the length of a long-term contract, and Consumers' draft contract for data center customers under Rate GPD does not require such a transfer in the event that a data center-specific rate is approved in the future.¹³ If Consumers' contracts with data center customers do not permit Consumers to transfer those customers from Rate GPD to a new data center-specific rate during the contract term, and the Rate GPD terms are insufficiently protective, then other customers may bear the burden of costs and stranded asset risks. Thus, the Commission should not permit approval of Consumers' proposed tariff modifications without full consideration of all relevant tariff design issues.

B. The Commission Has Broad Discretion to Consider Tariff-Related Issues Pertaining to Data Centers

Consumers' arguments for limiting the scope of this proceeding do not have legal support, and the Commission has broad discretion to consider tariff-related issues pertaining to data centers beyond the specific modifications that Consumers proposed in its Application.

¹¹ Consumers' Appeal, pp. 6 and 9.

¹² *Id.* at 2.

¹³ See Large General Service Primary Demand Rate GPD, Data Center Provision, Contract for Electric Service Part I, produced on May 1, 2025, in response to 21859-MNSC-CE-0019 (attached as Exhibit A).

Consumers based its Motion in large part on a statutory argument, claiming that the proceeding should be limited because its “Application only invoke[d] the Commission’s authority under MCL 460.57 and MCL 460.557(2).”¹⁴ Consumers did not brief this issue in its Appeal and has therefore abandoned it.¹⁵ In any event, as MNSC noted in its response to Consumers’ Motion, Consumers’ Application did not in fact limit to Commission’s jurisdiction to MCL 460.57 and MCL 460.557(2).¹⁶ Furthermore, both the Michigan Court of Appeals and the Commission have held that the Commission has “broad discretion” in determining what factors to consider under MCL 460.557(2), which Judge Talbot noted when deciding Consumers’ Motion.¹⁷ Specifically, the Commission “is permitted by law to exercise its discretion to determine the type of proceeding to hold and the factors to consider”¹⁸ and “is free to make pragmatic adjustments warranted by the particular circumstances.”¹⁹ Here, it would be pragmatic to consider all issues related to Consumers’ tariff design for data center customers in the proceeding specifically opened to address those issues.

In lieu of the statutory argument that Consumers raised below, Consumers’ Appeal focuses on its argument under the Michigan Rules of Evidence, which Consumers recognizes must only

¹⁴ Consumers’ Motion, p. 2.

¹⁵ See *Mitcham v. City of Detroit*, 355 Mich. 182, 203, 94 N.W.2d 388, 399 (1959) (“Failure to brief a question on appeal is tantamount to abandoning it.”); see also *Ass’n of Businesses Advocating Tariff Equity v. Pub. Serv. Comm’n*, 173 Mich. App. 647, 673, 434 N.W.2d 648, 661 (1988) (“The Attorney General also listed four other issues which are not briefed. We do not address them, since we find them to have been abandoned on appeal.”).

¹⁶ MNSC Response to Consumers’ Motion, p. 3.

¹⁷ Prehearing and Motion in Limine Oral Argument 1 Tr 47.

¹⁸ Case No. U-11456, Opinion and Order, October 29, 1997, p. 8.

¹⁹ *Att’y Gen v Pub Serv Comm’n*, 189 Mich App 138, 148; 472 NW2d 53, 58 (1991); see also Case No. U-11456, Opinion and Order, October 29, 1997, pp. 3-4, 6-7.

“be followed as far as practicable” in Commission proceedings.²⁰ In its Motion, Consumers argued that the proceeding should be limited to the specific issues raised in the “pleadings,” which Consumers defined as “the Company’s application in this context.”²¹ In response, MNSC explained that even under the Michigan Rules of Civil Procedure, the Commission would not be limited to the issues raised in the Company’s application.²² In its Appeal, Consumers argues that “[e]vidence that is irrelevant, prejudicial, or only marginally probative of the issues in question should be preemptively excluded by the tribunal,”²³ and Consumers continue to seek to limit the issues in question to its own proposed changes to Rate GPD. But Consumers takes a far too narrow view of the “issues in question,” and Consumers has presented no support for its claim that those “issues” should be limited to the specific proposed tariff terms in its Application. Rather, this contested case proceeding is a proper venue for assessing Consumers’ terms of service for prospective data center customers generally, and the Commission has discretion to consider what specific factors to consider within that broad scope.

Consumers’ reliance on the Commission’s May 28, 1986, Order in Case No. U-8409²⁴ is likewise misplaced. The Commission opened that proceeding after Commission Staff averred that

²⁰ Mich Admin Code, R 792.10427; MCL 24.275 (providing that the rules of evidence must only be followed “as far as practicable” in contested cases before the Commission).

²¹ Consumers’ Motion, pp. 4-5.

²² Specifically, MNSC noted that under Michigan Rule of Civil Procedure 2.110, the definition of “pleading” includes not only a plaintiff’s complaint but also all cross-claims, counterclaims, third-party complaints, answers, and replies to answers. MSC 2.110. Under Rule 2.203, pleaders are required to join “every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction,” and pleaders may join “as many claims . . . as the pleader has against an opposing party.” MCR 2.203.

²³ Appeal at 7.

²⁴ Consumers’ Appeal refers to this case as MPSC Case No. U-8509 rather than U-8409, which MNSC assumes was in error.

the Michigan Consolidated Gas Company (“Mich Con”) was earning in excess of its authorized rate of return and would likely continue to do so in 1986, and that “an undue burden [was] being placed on the customers of the company” as a result.²⁵ The Commission therefore opened a “show-cause proceeding as a means of resolving in an expedient manner the narrow question of whether Mich Con is currently earning in excess of its authorized rate of return.”²⁶ In issuing an order to show cause, the Commission explicitly stated that the “proceeding should be handled on an expedited basis,” noting that “the Commission believes its responsibility is to take prompt action to reduce this burden.”²⁷ Afterwards, when parties sought to introduce evidence pertaining to forecasted *future* data for 1987 and raise various rate design issues, the Commission excluded such evidence, noting that the use of only 1986 data “was justified on the basis of expediency” and would “provide[] an adequate basis for determining whether Mich Con’s rates are just and reasonable.”²⁸ Conversely, allowing the forecasted 1987 data and rate design issues would have transformed the expedited show-cause proceeding that the Commission had established into a fundamentally different rate case where rate design would be at issue.²⁹

The situation in Case No. U-8409 is not analogous to the present dispute. There, parties sought to, in effect, transform a limited show-cause proceeding to a broad rate case. Here, MNSC and other intervenors seek to utilize a contested case proceeding that was opened to consider potential tariff revisions to do just that, and in no way do MNSC or other intervenors seek to transform the nature of the proceeding. Furthermore, unlike the show-cause proceeding in Case

²⁵ Case No. U-8409, Order, February 11, 1986, p. 1.

²⁶ Case No. U-8409, Order, May 28, 1986, p. 750.

²⁷ Case No. U-8409, Order, February 11, 1986, p. 1.

²⁸ Case No. U-8409, Order, May 28, 1986, p. 749.

²⁹ *Id.*

No. U-8409, which the Commission specifically stated should be conducted on an “expedited basis,” here the Commission has ordered the development of an evidentiary record to consider the “unique and significant cost implications” from “[t]he electric load of new data centers.”³⁰ While the Commission stated that it intends to read the record to help achieve the “goal of issuing an expeditious decision,”³¹ Consumers has provided no basis upon which to conclude that issues related to the Michigan sales tax exemption for data centers, and the impact of data centers on other utility requirements, cannot be addressed during the six month schedule for testimony, hearing, and post-hearing briefing that the Commission established. Finally, maintaining a limited scope in Case No. U-8409 was necessary to swiftly remediate the potentially ongoing harm to other customers from Mich Con earning in excess of its authorized rate of return. Here in contrast, Consumers has not explained why its proposed tariff modifications are any more urgent than modifications pertaining to the issues it seeks to exclude, and it would be imprudent for Consumers to enter into 15-year minimum contracts with data centers before considering all relevant tariff design issues.

C. Judge Talbot correctly concluded that Consumers’ obligations under Michigan’s tax exemption legislation, including clean energy and non-subsidization requirements, are relevant to this case.

One of the two primary issues that Consumers seeks to exclude is its obligations under Michigan’s tax exemption legislation, Public Act 207 of 2024 (“PA 207”), including that legislation’s clean energy and non-subsidization requirements. Judge Talbot correctly refused to exclude evidence regarding “the requirements for data centers to meet a Michigan sales tax

³⁰ Case No. U-21859, Order, March 13, 2025, p. 3.

³¹ *Id.*

exemption,”³² because Consumers’ obligations under PA 207 must be considered when determining appropriate terms of service to data centers.

PA 207 exempts broad categories of data centers from sales or use taxes through the year 2050.³³ To qualify for the exemptions, data centers must meet a list of requirements. As MNSC noted in response to Consumers’ motion, two requirements pertaining to enterprise data centers—defined as data centers with aggregate capital investments of at least \$250 million—are centrally relevant to the issue of appropriate tariff design for data centers under Rate GPD.

First, PA 207 requires electric utilities to identify, and, if necessary, develop tariffs, contracts, and other mechanisms that support enterprise data centers in demonstrating compliance with clean energy requirements that are a condition of such data centers receiving sales and use tax exemptions.³⁴ Specifically, enterprise data centers must procure “clean energy” – as that term is defined in Public Act 295 of 2008 – equal to at least 90% of their forecasted electricity usage.³⁵ PA 207 lists three options for data centers to meet this requirement: self-supply through on-site generation, a long-term contract with the electric utility or other provider in whose service territory they locate, or participation in a voluntary green pricing program.³⁶ PA 207 requires that the long-term contract option “ensures no costs to serve the facility are passed onto other customers of the electric utility...” – with certain exceptions related to the costs of network transmission upgrades.³⁷ Critically, PA 207 states that electric utilities and other providers “shall identify, and, if necessary,

³² Consumers’ Appeal, p. 3.

³³ MCL 205.54ee(1)(4).

³⁴ MCL 205.54ee(10)(e)(ix).

³⁵ MCL 205.54ee(10)(e)(ix). Public Act 235 of 2023 amended PA 295.

³⁶ MCL 205.54ee(10)(e)(ix)(A)-(C).

³⁷ MCL 205.54ee(10)(e)(ix)(B).

develop tariffs, contracts, and other mechanisms that support the enterprise data center in making this demonstration” that it meets the requirements just outlined.³⁸ In its application, Consumers has not identified tariffs, contracts, or other mechanisms to accomplish these actions. But they must either be identified or developed – there is no option to not address these requirements. Therefore, as Judge Talbot recognized, questions regarding whether Consumers has the necessary tariffs, contracts, and other mechanisms in place now or needs to include them as part of the revisions to Rate GPD that would govern service to data centers are necessarily part of this case.³⁹

Second, PA 207 prohibits such data centers from taking service under “[a] rate that causes residential customers to subsidize the costs incurred to provide electric service to the facility.”⁴⁰ The Commission has sole authority to determine whether the rate provided to a data center complies with the prohibition on subsidization by residential customers, because it “is vested with complete power and jurisdiction to regulate all public utilities in the state”,⁴¹ “vested with the power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities;” and “further granted the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities.”⁴² Therefore, questions regarding whether the changes in rate GPD are sufficient to protect residential customers from subsidizing the costs Consumers incurs to serve new enterprise data centers are also relevant here, and evidence pertaining to this statutory requirement should not be excluded.

³⁸ MCL 205.54ee(10)(e)(ix).

³⁹ Prehearing and Motion in Limine Oral Argument 1 Tr 49-50.

⁴⁰ MCL 205.54ee(10)(e)(x)(C).

⁴¹ With certain exceptions that are not pertinent here.

⁴² MCL 406.6(1).

Consumers states that issues pertaining to the tax exemption legislation “are more appropriately considered in proceedings specifically (and statutorily) designed to consider these issues.”⁴³ But Consumers has not identified any ongoing or imminent proceedings in which it plans to address the specific issues raised by MNSC and other intervenors. It is therefore critical to deal with them in this case because, according to Consumers, time is of the essence. In its application, Consumers avers that it “has several new data center customers who are considering locating in the Company’s service territory;” and therefore seeks “to ensure the requested amendments to Rate GPD are in place before the Company enters into contracts to serve new data centers...”⁴⁴ By the same reasoning, Consumers needs to identify, or if necessary develop, the tariffs and contracts necessary to support demonstrations that these enterprise data centers meet the clean energy requirements outlined above. Given that new data centers are apparently imminent, and tariff amendments must be put in place expeditiously before the data centers sign up, these statutory tariff and contract requirements must also be addressed in this proceeding.

D. Judge Talbot correctly concluded that the impact of data centers on other utilities requirements, including the renewable energy credit standard and the clean energy standard, are relevant to this case

In addition to issues pertaining to PA 207, Consumers seeks to exclude issues pertaining to the impact of data centers on other utility requirements, including compliance with the renewable energy credit standard and the clean energy standard. But, as Judge Talbot recognized, Consumers’ Rate GPD structure directly implicates these utility requirements, and excluding those requirements from this proceeding would needlessly and detrimentally limit the scope of review.⁴⁵

⁴³ Consumers’ Appeal, pp. 5-6.

⁴⁴ Application, paragraph 17.

⁴⁵ Prehearing and Motion in Limine Oral Argument 1 Tr 48-49.

As noted in MNSC’s response to Consumers’ Motion, Consumers’ rate book specifies that its Renewable Energy Credit (REC) Programs are available to Rate GPD customers, in addition to programs such as its Net Metering Program and Green Generation Program.⁴⁶ The Net Metering Program has special provisions for Rate GPD customers.⁴⁷ The same is true of Consumers’ Renewable Energy Program, which the rate book states will be available on a date to be announced by the Company.⁴⁸ As such, provisions pertaining to renewable and clean energy must necessarily be considered when considering rules and conditions of service for potential data center customers under Rate GPD. Thus, as Judge Talbot stated, “these programs are addressed in the GPD tariff rate book, and . . . if we’re going to have a new tariff, . . . it should . . . address all of the potential issues.”⁴⁹ In its Appeal, Consumers has not addressed this key reason why its Motion was denied.

Furthermore, as MNSC also noted in response to Consumers’ Motion and Consumers has likewise not addressed in its Appeal, rate design for data center customers under Rate GPD may impact Consumers’ compliance obligations by incentivizing or disincentivizing the construction of additional energy generation resources. Because the issue of service to data centers under Rate GPD necessarily implicates Rate GPD’s relationship to Consumers’ clean energy and renewable energy credit programs, parties should be able to evaluate and address the sufficiency of Rate GPD’s terms related to those programs in this proceeding.

⁴⁶ Ex A-1 to Consumers’ Motion, pp. 1, 4; *see also* M.P.S.C. No. 14, Consumers Energy Company’s Rate Book for Electric Service, December 13, 2019 (“Consumers’ Rate Book”), Sheet Nos. D-11.00, D-68.00. The Green Generation Program was closed to new customers on April 5, 2019. LMC-1 at 1; Consumers’ Rate Book at Sheet No D-11.00.

⁴⁷ *Id.* at Sheet No. C-61.00.

⁴⁸ *Id.* at Sheet Nos. C-55.50, C-57.00.

⁴⁹ Prehearing and Motion in Limine Oral Argument 1 Tr 49.

E. Consumers has withdrawn its request that evidence regarding the development of a new rate for data centers be excluded from this proceeding

One of the issues that Consumers originally sought to exclude in its Motion was the development of a new rate specifically designed to serve data centers. Consumers withdrew its request to exclude this issue during oral argument,⁵⁰ which Consumers recognizes in its Appeal, stating that “[t]he Company has subsequently withdrawn its request that evidence regarding the development of a new rate for data centers be excluded from this proceeding.”⁵¹ But Consumers also claims in its Appeal that “[t]he issues raised by other parties, *including the development of a new rate specifically designed to serve data centers . . .* are more appropriately considered in proceedings specifically (and statutorily) designed to consider those issues.”⁵² To the extent that Consumers again seeks to argue that the issue of the development of a new rate for data centers is outside the scope of this proceeding, that argument has been waived. In any event, as MNSC addressed in its Response to Consumers’ Motion, that issue is well within the scope of this proceeding and should not be excluded.⁵³

F. The sample discovery questions that Consumers claims have caused “harm” are in fact relevant and reasonably tailored to this proceeding.

In its Appeal, Consumers identifies four discovery questions that it has received in this case, which Consumers broadly claims—without any support—have caused “harm.”⁵⁴ These four questions can be divided into two groups: the first two questions pertain to PA 207, and the latter

⁵⁰*Id.* at 25.

⁵¹ Consumers’ Appeal, p. 3, n. 1.

⁵² *Id.* at 6.

⁵³ See MNSC’s Response to Motion, pp. 6-8.

⁵⁴ Consumers’ Appeal, p. 8.

two questions pertain to whether Consumers considered proposing specific Rate GPD modifications separate from those in its Application. Consumers has not explained why any of these questions have caused it “harm,” and to the extent that Consumers believes that any of the questions are unduly burdensome, Consumers may object to the specific requests on those grounds.

The first question, labelled U21859-XXX-CE-0023, concerns whether Consumers’ potential data center customers would qualify as enterprise data centers under PA 207. This question is relevant because PA 207 imposes requirements on Consumers to develop compliant tariffs for those customers, as detailed above. MNSC recognizes that Consumers may not necessarily have all of the data requested in U21859-XXX-CE-0023, but if that is the case, Consumers may simply respond to that effect, rather than seeking to exclude the question in a motion *in limine*.

The second question, labelled U21859-XXX-CE-0027, asks Consumers to describe any planning that Consumers has taken to fulfill its obligation under PA 207 to “identify and, if necessary, develop tariffs, contract, and other mechanisms that support the enterprise data center in making [its 90% clean energy] demonstration.” As discussed above, this proceeding is an appropriate vehicle for addressing Consumers’ tariff-design obligations under PA 207, making the requested information relevant.

Consumers also takes issue with U21859-XXX-CE-0029, which asks whether Consumers considered including provisions addressing data center customers participating in demand response or to interrupt load, along with U21859-XXX-CE-0030, which asks whether Consumers considered including provisions addressing requirements related to clean or renewable energy

sources. Rate GPD already has terms addressing these issues for Rate GPD customers generally,⁵⁵ and in a proceeding designed to address potential modifications to Rate GPD to serve data centers, questions regarding Consumers' process for determining which Rate GPD terms to propose modifying or adding cannot be considered harmful or irrelevant. Furthermore, Consumers has already responded to these questions pointing to interruptible provisions, demand response options, and voluntary green pricing programs it claims would be available to data center customers taking service on Rate GPD, and Consumers did not raise any objections to these questions in its responses.⁵⁶

MNSC also notes that Consumers has not listed demand response and interruptible load among the specific issues that it seeks to exclude in its Appeal. To the extent that Consumers' listing of U21859-XXX-CE-0029 implies that it believes issues pertaining to demand response and interruptible load should be excluded, Consumers has failed to raise this argument in its Motion or Appeal with sufficient specificity.⁵⁷ Furthermore, data centers' enrollment under Rate GPD in Consumers' demand response and interruptible load programs may directly impact reliability and rates for other Consumers' customers, and potential modification to Rate GPD's demand response and interruptible load provisions should therefore be considered in this proceeding.

⁵⁵ See Ex A-1 to Consumers' Motion, pp. 1-2, 4; Consumers' Rate Book, Sheet Nos. C-55.50, C-57.00, C-61.00, D-11.00, D-63.00 to D-68.00.

⁵⁶ See Consumers' May 1, 2025, responses to 21859-MNSC-CE-0029 & 21859-MNSC-CE-0030 (attached as Exhibit B).

⁵⁷ See Mich. Admin. Code R. 792.10432(1) (requiring motions to "[s]tate with particularity the grounds and authority on which the motion is based" and "[s]tate the relief or order sought."); *Calderon v. Auto-Owners Ins. Co.*, No. 313367, 2014 WL 1679130, at *8 (Mich. Ct. App. Apr. 24, 2014) ("[t]he court may deny a motion in limine when it lacks the necessary specificity with respect to the evidence to be excluded.") (quoting *Koch v. Koch Indus, Inc.*, 2 F.Supp.2d 1385, 1388 (D. Kan. 1998)).

III. CONCLUSION

For the foregoing reasons, if the Commission chooses to consider Consumers' Appeal, MNSC respectfully urges the Commission to uphold Judge Talbot's decision and reject Consumers' requested motion *in limine*.

TROPOSPHERE LEGAL, PLC
Counsel for MNSC

Date: May 14, 2025

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Question:

3. Identify and produce any contracts, tariff provisions, or other mechanisms regarding the provision of service to data centers that Consumers has developed or is in the process of developing.

Response:

The Company has prepared the attached draft contract for Rate GPD with the data center provision. The proposed tariff provisions were provided as Exhibit A-1 (LMC-1).

Witness: Laura M. Connolly

Date: April 30, 2025

LARGE GENERAL SERVICE PRIMARY DEMAND RATE GPD

DATA CENTER PROVISION

**CONTRACT FOR ELECTRIC SERVICE
 PART I**

Parties to Contract	
Company Consumers Energy Company a Michigan Corporation One Energy Plaza Jackson, MI 49201-2357	Customer
Customer Facility	
Service Location Name	Service Characteristics
Service Location	Billing Address
Service Address City	Customer Account Number To be assigned at permanent meter set
Service Address County	Meter Numbers To be assigned at permanent meter set
Maximum Demand:	
On-Peak Billing Demand:	
Monthly Minimum Charge: Customer Charge, MPSC-approved surcharges and Minimum Billing Demand charge.	
Substation Ownership Credit: Y <input type="checkbox"/> or N <input type="checkbox"/>	
Interruptible Service Provision: Y <input type="checkbox"/> or N <input type="checkbox"/>	
Term: 15 Years, beginning on Effective Date.	
Additional Pages of Agreement	
The Large General Service Primary Demand Rate GPD – Data Center Provision Contract for Electric Service includes this Part I and the attached Part II (Terms and Conditions, including Exhibits), which is incorporated herein by reference and expressly made a part hereof, together being this “ <u>Agreement</u> .”	
Execution of Agreement	
Company and Customer hereby enter into this Agreement, as evidenced by the signatures of their authorized representatives below. The Effective Date for service under this Agreement to begin is [_____]	

CONSUMERS ENERGY COMPANY

[CUSTOMER]

 Garrick J. Rochow
 President and Chief Executive Officer
 Consumers Energy Company
 Date: _____

 [Name]
 [Title]
 [Company]
 Date: _____

TERMS AND CONDITIONS

PART II

1. This Agreement is made under Company’s Large General Service Primary Demand Rate GPD (“Rate GPD”) a copy of which is attached hereto as Exhibit A and made a part hereof. The Agreement is subject to the applicable rates and other tariff provisions approved by the Michigan Public Service Commission (“MPSC”), which may be changed from time to time.
2. The Customer acknowledges and agrees that, as of the Effective Date of this Agreement: (i) the Customer will be a full service electric customer which will take service at the Company’s Primary Voltage levels; (ii) in order to receive electric service from the Company, Customer has agreed to a minimum Term of 15 years for this Agreement; and (iii) the Customer will meet a monthly Minimum Billing Demand for the Term this Agreement, which is defined as eighty percent (80%) of the On Peak Billing Demand specified in section 2(a) of this Agreement and eighty percent (80%) of the Maximum Demand specified in section 2(a) of the Agreement. The Customer further acknowledges and agrees to the following requirements:

- (a) On Peak Billing Demand and Maximum Demand Requirements are set based on the ramp up schedule below:

Effective Date	On Peak Billing Demand Requirement	Maximum Demand Requirement
X/X/20XX	X MW	X MW
X/X/20XX	X MW	X MW
X/X/20XX	X MW	X MW
X/X/20XX	X MW	X MW
X/X/20XX	X MW	X MW

- (b) In the event that the Customer’s monthly On Peak Billing Demand and/or Maximum Demand is below the Minimum Billing Demand, the Customer shall pay the Company an amount equal to the difference between the actual service taken and the Minimum Billing Demand, calculated at the applicable rates.
- (c) In the event Customer’s On Peak Billing Demand or Maximum Demand exceeds the amounts specified in Part I of this Agreement, the Company may require amendment to Part I of this Agreement to reflect the actual service taken. The Minimum Billing Demand will be adjusted upward to reflect any increases to the On Peak Billing Demand or Maximum Demand specified in Part I of this Agreement.
- (d) Customer Exit Fee: In the event Customer ceases taking power supply service from the

Company at the Customer Facility identified in Part I of this Agreement during the Term of this Agreement, the Company shall be entitled to recover from Customer an Exit Fee. The Exit Fee shall be calculated by multiplying the Minimum Billing Demand by the remaining months left in the Term, based the date on when Customer ceases taking power supply service from the Company. The Company may, at its sole discretion, reduce the Exit Fee if it determines that the loss of the Customer's load will not harm the Company or its other customers.

3. Customer shall provide the Company with financial security or other collateral from the Customer, the suitability of which will be determined by the Company in its sole discretion, in amounts up to the projected cost of providing service to the Customer for the Term of this Agreement, as specified in Exhibit B to this Agreement. This requirement shall not be interpreted to limit the Company's authority to require other financial security requirements from the Customer.
4. Customer shall pay an upfront administrative fee, not to exceed one hundred thousand dollars (\$100,000) per project proposal, to cover the costs associated with preparing the proposals. This fee shall be charged directly to the entity requesting the proposal and is non-refundable.
5. The Company agrees to supply, and the Customer agrees to purchase hereunder, all of the electric energy for the operation of the Customer's Facility described in Part I.
6. The electric energy to be supplied hereunder shall be alternating current and shall have the characteristics identified in Part I. Delivery shall be made at one mutually agreeable point upon the Customer's premises. It shall be metered by meters furnished, installed and maintained by the Company. A location for the metering equipment, suitable to the Company, shall be provided by the Customer and adequate protection afforded to avoid damage thereto, tampering or interference with such metering equipment. The Company shall make periodic tests of its meters and keep them within accepted standards of accuracy.
7. The Customer shall pay the applicable charges as provided in the Large General Service Primary Demand Rate GPD, which may be modified time to time by the MPSC, or other applicable rate as approved by the MPSC.
8. It is further agreed that:
 - (a) Such service is for the sole use of the Customer and shall not be transmitted elsewhere, or shared or resold, or used as auxiliary or standby as to any other source of power supply, except as may be herein provided.
 - (b) The Company reserves the right, at its sole discretion, to allow a one-time adjustment to the Contract Capacity. This adjustment must be mutually agreed upon by both the Company and the Customer and will be documented in an amendment to the existing contract. If the Customer's usage exceeds the Contracted Capacity by 1,000 kW or more, the Company shall have the right to amend the contract to reflect the increased usage. The Customer will be responsible for any additional costs incurred due to this increase in capacity. Should additional capacity be unavailable, the Customer shall be required to reduce its usage to the Contract Capacity. Failing to comply with this

requirement, the Company reserves the right to suspend service.

- (c) Such service shall be governed by the Company's Rate Book for Electric Service ("Rate Book") and such future revisions and amendments hereof, supplements thereto, or substitutions therefore as may be filed with and approved by the MPSC during the Term of this Agreement. A copy thereof will be furnished to the Customer upon request.
- (d) Except as to the Monthly Minimum Charge payable by the Customer, neither party shall be liable to the other for damages for any act, omission or circumstance occasioned by or in consequence of any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, or by any other cause or causes beyond such party's control, including any curtailment of service by the Company, or order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of necessary repairs upon the property or equipment of either party hereto; provided, however, that the Company's responsibility for interruptions in service, phase failure or reversal, or variations in the service characteristics shall be as provided in the Company's Rate Book.
- (e) This Agreement will become Effective on the date identified in Part I and will extend for a Term as stated in Part I and from month to month thereafter until terminated by mutual consent, or by either party giving the other at least twelve (12) months written notice of its desire to terminate the same at the expiration of any monthly period after the initial Term. Notwithstanding the foregoing, the Company may, in its sole discretion, terminate this Agreement on ninety (90) days' written notice if the MPSC issues an order which disallows or otherwise impairs the Company's cost recovery associated with this Agreement. Notice of termination of this Agreement after the initial Term by the Customer to the Company or vice versa shall be provided in writing.
- (f) This Agreement inures to and binds the heirs, administrators, successors and assigns of the respective parties hereto. There are no understandings or agreements between them in relation to electric service at the facility service location stated in Part I except as set forth herein. This Agreement supersedes all previous representations, negotiations, understandings or agreements, either written or oral, between the parties hereto or their representatives pertaining to the subject matter hereof and constitutes the entire agreement of the parties. This Agreement shall not be transferred by the Customer or otherwise alienated without the Company's written consent; any such attempted transfer without the Company's written consent shall be void.
- (g) The Customer shall furnish, without cost to the Company, a suitable site on its premises location listed in Part I for the Company's distribution lines, substations, and/or facilities as may be required to provide such service to said premises. If, during the Term hereof, the Customer's use of said premises makes necessary the relocation of said facilities, from the site presently furnished, to another site on said premises, the Company shall relocate the same at the Customer's request, and the Customer shall

reimburse the Company for the cost thereby incurred. The Company, its agents, employees, and authorized contractors shall have full right and authority of ingress and egress at all times on and across said premises of the Customer, for the purpose of constructing, operating, maintaining, replacing, repairing, moving and removing its said facilities. Said right of ingress and egress, however, shall not unreasonably interfere with the Customer's use of said premises.

- (h) This Agreement may be executed and delivered in counterparts, including by an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

- 9. Severability. In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect. In the event that the Term, Minimum Billing Demand or Customer Exit Fee provisions of this Agreement are determined to be invalid or unenforceable, the parties will use good faith efforts to promptly amend this Agreement to ensure appropriate cost recovery for the Company if: (i) there is any shortfall in the Customer's usage below the Minimum Billing Demand threshold and (ii) Customer ceases taking power supply service from the Company at the Customer Facility identified in Part I of this Agreement during the Term of the Agreement.

Question:

13. Did Consumers consider including provisions addressing data center customers participating in demand response or to interrupt load (e.g., size of interruptible load, notice of planned interruption, duration of interruption, and maximum hours of interruption per year)? If so, please explain the basis for not addressing such issues in the proposed tariff revisions. If not, please explain why not.

Response:

Rate GPD has interruptible provision options in place that are available to data centers taking service on Rate GPD.

Demand response options would be available to data center customers in a manner similar to other Rate GPD customers.

Witness: Laura M. Connolly

Date: April 30, 2025

Question:

14. Did Consumers consider including provisions addressing requirements related to clean or renewable energy resources? If so, please explain the basis for not addressing such issues in the proposed tariff revisions. If not, please explain why not.

Response:

The Company has voluntary green pricing programs in place that are available to data center customers taking service on Rate GPD.

Witness: Laura M. Connolly

Date: April 30, 2025

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

PROOF OF SERVICE

On the date below, an electronic copy of **Response to Consumers Energy Company's Application for Leave to Appeal the Ruling on Consumers' Motion In Limine by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, And Citizens Utility Board of Michigan** was served on the following:

Name/Party	E-mail Address
Administrative Law Judge Katherine E. Talbot	Talbotk@michigan.gov
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The statements above are true to the best of my knowledge, information and belief.

TROPOSPHERE LEGAL, PLC
Counsel for MNSC

Date: May 14, 2025

By: _____
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