



ENVIRONMENTAL LAW & POLICY CENTER

May 14, 2025

Via E-File

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

RE: MPSC Case No. U-21859

Dear Ms. Felice:

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

Sincerely,

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cc: Service List, Case No. U-21859

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Manny Flores, Chair | Howard A. Learner, Executive Director

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Pursuant to Rule 433 of the Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” or the “Commission”), the Ecology Center, the Environmental Law & Policy Center, the Union of Concerned Scientists, and Vote Solar (collectively, the “Clean Energy Organizations” or “CEO”) file their Response in Opposition to Consumers Energy Company’s (“Consumers” or “the Company”) appeal of the Administrative Law Judge’s (“ALJ”) denial of its motion *in limine* (“Consumers Appeal Motion”).

I. Introduction

The Commission should reject Consumers’ appeal of the ALJ’s denial of its motion *in limine* to limit the scope of this proceeding. First, the ALJ properly applied the law and found the issues related to (1) clean energy compliance and PA 235 and (2) the state tax exemption relevant to the proceeding. 1 TR 50. Second, the Commission should dismiss Consumers’ argument about the potential delay in considering these issues because the Commission has already set an expeditious schedule for this proceeding – Consumers provides no evidence to demonstrate that inclusion of these issues will delay resolution. Third, Consumers argues to exclude clean energy issues from this docket because those issues can be resolved in other proceedings, but consideration of clean energy and resource adequacy fit squarely within the scope of this proceeding. The CEO and other parties wish to introduce evidence to this effect for the Commission’s consideration, and the Company raises no proper basis to exclude it. Therefore, the Commission should reject the Company’s appeal of the ALJ’s well-grounded denial of its motion *in limine*.

II. The ALJ Properly Applied the Law and the Commission Should Affirm its Denial of the Company’s Motion *in Limine*

Based on the Company’s motion, the responses from Intervenors, and a robust argument, the ALJ denied Consumers’ attempt to limit the scope of the proceeding. 1 TR 50. The ALJ’s

reasonable ruling noted the relevance of the information and its relationship to the development of a data center tariff or sub-tariff under Rate GPD. Consumers argues otherwise. Buried on page five of its motion, the Company argues that “[t]he ALJ’s ruling failed to appropriately address the basis upon which the Company sought to limit the scope of the proceeding and thus appropriately apply the law.” Consumers Appeal Motion at 5. However, the Commission should reject the Company’s attempt to call into question the ALJ’s well-reasoned decision. The ALJ highlighted the Commission’s “broad discretion” to consider relevant issues. 1 TR 47; *see also In re Consumers Energy Co.*, 278 Mich. App. 547, 563 (2008) (In pursuit of just and reasonable rates, the Commission “may, in the exercise of its discretion, determine what factors are relevant in a particular case.”). The ALJ also found that the clean energy standard compliance and the tax exemption “could potentially relate to the tariff,” in other words – they are *relevant* to establishing a tariff. 1 TR 49. Finally, the ALJ noted, as several Intervenors did, “that these programs are addressed in the GPD tariff rate book, and that if we’re going to have a new tariff, that it...should address all of the potential issues.” *Id.*

Consumers does not even respond to this last issue in its appeal. As explained by the ALJ, the issues related to clean energy, including the VGP program, would factor into the tariff rate book, and therefore it would be improper to separate them from this docket, intended to develop the terms and conditions for a data center rate.

The ALJ’s ruling, well-grounded in the law and factoring in the arguments made by Intervenors, should be affirmed by the Commission. As the Company outlined, the Commission may “reverse an administrative law judge’s ruling if the Commission finds that a different result is more appropriate.” April 21, 2021 Order in Case No. U-20763. However, as explained below, both because Consumers lacks support for this motion to exclude and because of the critical

public policy issues that warrant consideration, the ALJ's determination, was in fact, the most "appropriate."

III. The Company's Principal Grounds to Exclude Issues is That Consideration Will Cause Delay, but the Schedule is Set and the Company Makes No Showing That These Issues Will Delay Proceedings

Rather than mount its case in terms of the relevance of the two issues, or the appropriateness of the ALJ's ruling, the Company spends most of its motion discussing the potential delay and hardship imposed by the consideration of clean energy compliance and the sales tax exemption. Consumers Appeal Motion at 2, 5, 6. For example, Consumers argues that "[f]ailure to limit the scope of this proceeding enhances the likelihood that Consumers Energy could end up in a position to begin serving new data centers under the Company's current Rate GDP with none of the proposed protections in place." *Id.* at 6.

The Company makes no showing that consideration of these issues will delay a Commission order in this docket. The Company entirely ignores that the Commission order set a "goal of issuing an expeditious decision," with the completion of briefing by September 16, 2025. Case No. U-21859, March 13, 2025 Order at 3-4. That date will not change, whether or not, these issues are included or excluded from the proceeding.

Essentially, the Company's appeal seeks to relitigate yet again the Commission's decision to order a contested case rather than approve the Company's application *ex parte*. The Commission ordered this contested case based on the "filed pleadings" and determined that "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." *Id.* at 3. Thus, the Commission's March 13 order already established that this case would not be limited to the Company's Application. The load from data centers has far-reaching

implications and the Company has not put forward a reason to delay consideration of those issues in this docket.

The CEO appreciate the Company's urgency to implement the important consumer protections embodied in its application. At the highest level, the CEO support the Company's goals. However, as argued in the CEO's objection to *ex parte* consideration, it would be imprudent to entirely disregard clean energy issues at this critical time.

IV. Consideration of Data Center "Terms" Necessarily Includes Clean Energy and Resource Adequacy

The Company argues that issues related to clean energy should be excluded from this proceeding because they "are more appropriately considered in proceedings specifically (and statutorily) designed to consider those issues." Consumers Appeal Motion at 6. However, for several reasons, the Company's position on clean energy's role in this proceeding is flawed and misguided.

First, the Company belabors throughout its application, motion *in limine*, and in this appeal that the focus of this proceeding is on the "terms of service for any new data centers taking service under the rate." Consumers Appeal Motion at 5. As the CEO's expert will testify, amongst the necessary terms of service for new data centers should be a term related to clean energy adoption. The Company testified that it has over 15 gigawatts of data center load in its economic development pipeline and expects this trend to continue increasing. Conolly Direct at 4. Such unprecedented load growth presents a tremendous challenge for the Company and its grid to accommodate the clean energy necessary to comply with state law, especially with the recent MISO capacity market price increases, which make it even more critical that Michigan ensures it can maintain resource adequacy by matching new loads with clean/firm energy. Accordingly, ensuring that new data centers are required to "bring their own clean energy" to the

table is an essential term that should be included as a condition to taking service under the new Rate GPD.

Second, the Company's argument that other proceedings are more appropriate to discuss clean energy standard compliance misunderstands the purpose of the discussion in this proceeding. Put simply, there is a difference between ensuring compliance with the renewable energy standard in a renewable energy plan proceeding and laying the foundation for compliance through good policy and tariff development here. By ensuring that data centers "come to the table" with significant clean energy generation, both front of the meter and behind the meter, Consumers and the Commission will put the Company on the path to comply with the renewable portfolio standards down the road.

This speaks to the larger tension in the Company's motion and its appeal. The Company wants to expedite and rush its favored terms and conditions, while placing other issues on the back burner. The Company's argument that unreasonable delay could lead to "serving new data centers under the Company's current Rate GPD with none of the proposed protections in place," applies in equal force to clean energy related terms. Consumers Appeal Motion at 6. By delaying consideration of new clean generation to match the new data center load, the Company exacerbates the risk of resource inadequacy and capacity price spikes. The Commission should deny Consumers' appeal and take the prudent course of considering all of these issues in this docket.

Ultimately, the Company has failed to put forward any reason why clean energy compliance should be excluded from consideration in this proceeding. As demonstrated above, it is relevant to the Company's application and the development of a new data center tariff rate.

Further, the unprecedented load growth from data center presents a serious challenge to clean energy compliance that requires swift action, not delay.

V. Conclusion

The Clean Energy Organizations respectfully request that the Commission deny Consumers Energy's appeal of the ALJ's denial of its motion *in limine*.

Respectfully submitted,

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

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Dated: May 14, 2025

**STATE OF MICHIGAN
MICHIGAN PUBLIC SERVICE COMMISSION**

In the Matter of the Application of)	
Consumers Energy Company for Ex Parte)	
Approval of Certain Amendments to Rate)	Case No. U-21859
GPD.)	

PROOF OF SERVICE

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

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