

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.

MPSC No. U-21859

**The Attorney General’s Response to Consumers
Energy Company’s Application for Leave to Appeal
The Administrative Law Judge’s April 16, 2025
Ruling on a Motion *In Limine***

The Attorney General opposes Consumer Energy Company’s Application for Leave to Appeal Administrative Law Judge Talbot’s ruling on the Company’s Motion *in Limine*. Judge Talbot ruled correctly on the arguments presented by the Attorney General in her Response to the Company’s Motion, and for the reasons stated below. The Commission should thus affirm the ALJ’s ruling. An examination of the requirements for appealing ALJ decisions further shows that Consumers does not qualify for the relief it requests here. Finally, information identified by the intervenors in this matter to date emphasizes the importance of the Commission’s order directing a contested proceeding for this case and the ALJ’s application of that order in their ruling.

I. Statement of Facts

Consumers Energy Company (“Consumer” or “The Company”) first attempted to limit the scope of this proceeding by applying for *ex parte* relief. The Commission denied *ex parte* relief in an order issued on March 13, 2025, finding in part that:

The Commission has reviewed the filed pleadings and applicable legal authority and finds that *ex parte* treatment of the application is not appropriate. The electric load of new data centers presents unique and significant cost implications, and the development of an evidentiary record to consider the February 7 application is prudent and reasonable. MCL 460.6a(3); *see also*, June 30, 2020 order in Case No. U-20763, pp. 69-70. Thus, the Commission grants the requests for a contested case proceeding in this matter. Mich Admin Code, R 792.10415(1).¹

Despite this Order from the Commission, the Company made a second attempt to limit the scope of the proceeding by filing a Motion *in Limine* prior to the prehearing conference. The Company's Motion trotted out many of the same arguments the Company raised in its attempt to avoid a contested proceeding, including that any considerations related to compliance with renewable and clean compliance standards should not be considered in this matter. Several intervenors filed responses to the motion, including the Attorney General. Hearing the Motion on the same day as the prehearing conference, Administrative Law Judge (ALJ) Talbot denied Consumers' request to exclude any testimony on the following topics: "(3) the impact of data centers on other utility requirements (e.g. compliance with the renewable energy credit standard, the clean energy standard, etc.), and (4) the requirements for data centers to meet a Michigan sales tax exemption."²

Judge Talbot found the Attorney General's argument on prematurity of the motion was correct,³ and noted that "in this case, as a trier of fact, I'm very confident

¹ U-21859, March 13, 2025, Commission order at 3.

² Consumers' Motion *in Limine* at 5, ¶8.

³ Motion Hearing Transcript at 46:24 – 47:1.

the Commission will be able to effectively evaluate and give appropriate weight to any evidence presented in this case.”⁴ Judge Talbot further held that:

So in this case, I agree that the compliance with the renewable energy credit standard and the clean energy standards are part of what should be looked at in the determination of whether or not a new tariff or whether the GPD structure should be altered. And in kind of the same light, I find that the data centers -- that the requirements for data centers to meet the sales tax exemption are also relevant....

And in kind of the same light, I find that the data centers -- that the requirements for data centers to meet the sales tax exemption are also relevant. And I think it was Mr. Bzdok that pointed out that the Michigan -- MCL 205.54ee(A) and ee(10)(e)(ix) requires that the Company support the data centers to show 4 compliance.

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

So, and it was the Attorney General that noted that the Commission did not specifically exclude any of these issues, despite the fact that many of them, as Consumers notes, were brought up in the motion concerning ex parte.⁵

On April 30, 2025, Consumers filed its Application for Leave to Appeal Judge Talbot’s ruling on its Motion *in Limine*.

II. Argument

The Company’s Application for Leave largely reiterate the arguments made in its Answer and Motion *in Limine*. The Attorney General thus reiterates the central arguments made in her Response to the Motion *in Limine*. The Company’s Motion was premature for consideration given that no record had been developed, and the

⁴ *Id* at 47:23 – 48:1.

⁵ *Id* at 49:18 – 50:16.

Motion constituted a mis-identified dispositive motion. Consumers' requests for relief were likewise too vague and overly broad, and were self-contradictory in a manner that would have only have created confusion and inefficiency if granted. Further, the subjects raised by the Attorney General's Petition are relevant to the proceeding as ordered and under the Company's own suggested scope.

The Attorney General hereby incorporates by reference the arguments raised in her Response to Consumers' Motion (attached hereto as Exhibit A). Judge Talbot ruled correctly on the arguments presented by the Attorney General therein, and for the reasons stated below. The Commission should thus affirm Judge Talbot's ruling on Consumers' Motion *in Limine*. An examination of the requirements for appealing ALJ decisions further shows that Consumers does not qualify for the relief it requests here. Finally, information identified by the intervenors in this matter to date emphasizes the importance of the Commission's order directing a contested proceeding for this case and the ALJ's application of that order in their ruling.

For the reasons set forth herein, the Attorney General requests that the Commission affirm the Judge Talbot's ruling and deny the Company's requested relief.

A. The Company's own arguments emphasize why this case is appropriate for addressing the topics at issue.

One of the arguments repeated by the Company here is that other MPSC cases would be better suited to address the terms of its proposed "data center provision." It elaborated on this theme at oral argument on April 16, 2025, stating that, for example, concerns on the subject of renewable energy would be better suited for the

Company's ongoing renewable energy plan case U-21816.⁶ Consumers' reasoning was stated during the hearing as follows:

[E]very case filed by Consumers Energy should not open it up to every possible interest of every -- every participating party. Consumers Energy maintains that a scope of the case should be defined by the case that is filed.⁷

Consumers misses the irony in this argument: nowhere in its renewable energy plan case has it purported to request or discuss the terms of tariff provisions specific to data centers. Not only does it not propose any "data center provision" in that case, its description of data center customers references Rate LED rather than any amendment to Rate GPD. Critically, Rate LED explicitly prohibits new data center customers from taking service under that rate: "*As of June 7, 2024, the Large Economic Development Rate is not available to data centers within the Company's service territory who have not already contracted for service under this rate.* [emphasis original]"⁸

Given these details and omissions from Consumers' renewable energy plan case, it is clear the Company did not intend to address Rate GPD tariff provisions—or any other tariff provisions specific to data centers—in that case. In contrast, it has filed the present case explicitly to address data center tariff provisions. This is thus the most suitable and appropriate matter to consider potential tariff terms as to data centers. The same can be said for considerations raised by the intervenors as to the tax exemption statute MCL 205.54ee. As identified in the Attorney General's

⁶ *Id* at 27:21 – 28:8.

⁷ *Id* at 26:5-9.

⁸ Consumers' Electric Rate Book, at First Revised Sheet No. D-78.10.

Petition, in her Response to Consumers’ Motion, and at oral argument, the tax exemption statute explicitly contemplates data center tariff provisions concerning clean energy procurement.⁹ There is no other proceeding better suited for considering such tariff provisions.

Further, the Commission presumably reviewed the intervenor’s positions on these topics in denying the Company’s request for *ex parte* relief. The Commission noted in its March 13, 2025, order that it had “reviewed the filed pleadings and applicable legal authority” in reaching its decision to direct a contested proceeding. And nowhere in its order did the Commission limit the scope of the case to exclude Consumers’ disfavored topics, despite the fact that the Company had raised many of the same arguments as here in its Answer.

Consumers’ citation to the April 21, 2021, order in case U-20763 is inapposite. In that instance, the ALJ reasoned that a matter concerning a discrete segment of pipeline construction did not implicate considerations about the entirety of the pipeline system. Here, in contrast, we are looking at the discrete piece itself: the tariff provisions for data centers customers that are necessary to protect ratepayers. The Company seems to intuitively understand this given that its Motion *in Limine* sought to include within scope “impacts [the added data center load] could cause to the Company and its other customers.” The “impacts” from data center load include

⁹ See MCL 205.54ee(10)(e)(ix) (stating in relevant part that “electric utilities . . . shall identify and, if necessary, **develop tariffs**, contracts, and other mechanisms that support the enterprise data center in making this demonstration”) (emphasis added).

impacts on compliance with PA 235, which in turn may be addressed by tariff provisions.¹⁰

As further addressed in the Attorney General's response to Consumers' Motion, the topics at issue are relevant under the broad standard established by courts in Michigan. The Commission should thus affirm the ALJ's ruling as to the scope of this proceeding.

B. Consumers' Application for Leave to Appeal Does Not Meet the Standards of Rule 433(2) of the Commission's Rules of Practice and Procedure, R 792.10433(2)

Consumers does not qualify for relief as it requests under Rule 433(2) of the Commission's Rules of Practice and Procedure, R 792.10433(2). This Rule establishes the standards which must be satisfied for the Commission to grant an application to appeal an ALJ's ruling prior to its consideration and decision on the merits of the entire case, and provides as follows:

(2) The commission will grant an application and review the presiding officer's ruling if any of the following provisions apply:

(a) A decision on the ruling before submission of the full case to the commission for final decision will materially advance a timely resolution of the proceeding; (b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large. (c) A decision on the ruling before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order. [R 792.10433(2)]

¹⁰ The Company's also cites to a May 28, 1986, Order in MPSC Case U-8509, though that order does not appear to be accessible on the MPSC's case docket website, the MPSC's website's archived orders, or Westlaw. Notable, however, is that the Company's description of that case makes it sound as though the question at issue was whether the schedule would need to be changed to reflect additional review – no such issue has been identified by the Company in the present matter, and the Commission has ordered a specific deadline for completing the record.

For all of these subsections, Consumers argues that allowing the scope granted by Judge Talbot will complicate and delay a resolution of this matter. But in another instance of irony, it is Consumers' repeated and steadfast arguments as to the scope of this matter that has in fact caused complications and delay. In addition to the time spent by the parties arguing Consumers' premature Motion *in Limine* and present Application for Leave, the Company's recalcitrance has a chilling effect on potential settlement discussions as to these topics.

Consumers' stubbornness also appears to have caused it to take a strange posture in discovery. The Company's discovery responses on its disfavored topics have been terse and cryptic, sometimes providing responses subject to relevancy objections despite Judge Talbot's ruling. One such example can be seen in Consumers' response to MNSC's discovery question U21859-MNSC-CE-0030:

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.¹¹

The Company's reply here is not directly responsive to the question asked by MNSC, and at the very least would require follow-up questions in order to elucidate a more fulsome answer, further sapping the parties' time. The unwillingness to provide a direct response also ignores any considerations as to how PA 235

¹¹ See the full page of the response attached as Exhibit B.

compliance costs might be driven by the massive increase in data center load the Company has forecasted. This in turn ties in with another argument from the Attorney General's response on the Motion *in Limine*: the Company's request to exclude considerations of PA 235 compliance, which includes compliance costs, directly contradicts its request that the scope include "impacts [the added data center load] could cause to the Company and its other customers." As identified in the Attorney General's Petition:

[A]n additional cost of compliance with Public Act 235 driven by data center loads could result in unjust and unreasonable costs to other customers.

Consumers has not challenged this proposition in the Company's Answer, its Motion *in Limine*, or its present Application for Leave. It nonetheless continues to seek exclusion of topics concerning PA 235 compliance, despite the fact that they fall within the impacts to customers that the Company has sought to include within scope. This contradictory relief, if granted, would only cause confusion as to the boundaries of the case and further mire this matter in needless argument.

Consumers' remaining arguments for qualification under Rule 433(2) are also unpersuasive. The Company claims that inclusion of its disfavored topics will impair an "expeditious decision" as referenced in the Commission's order directing a contested proceeding. But in context, the term "expeditious decision" is referencing the Commission's reading the record without need for a PFD following the deadline set in the order for completing the record:

The record for this contested case proceeding, including all evidence and briefing, shall be completed by September 16, 2025. With the goal of issuing an expeditious decision on the company's February 7

application, the Commission shall read the record, dispensing with the Page 4 U-21859 need for a proposal for decision.

Consumers also fails to demonstrate how its disfavored topics have caused any concrete delays to the schedule, which all parties agreed to and is in conformance with the Commission's deadline for completion of the record.

Likewise confusing is the Company's assertion that inclusion of its disfavored topics would present a harm to the public under 433(2)(b) because large data centers could come online in the near future without further protections for other customers.¹² Again, the Commission set a deadline for completion of the record in this case and the Company agreed to a schedule accordingly. Further, the Company has stated in discovery that it does not presently have any data center customers under contract that would take service under its proposed "data center provision."¹³ It has similarly responded that it has not "submitted formal interconnection requests and has not received System Impact Studies from METC for potential customers to be served under the proposed data center provision."¹⁴ These responses appear to run counter to the Company's argument on the imminency of a risk to other customers during the pendency of this case.

The Company has thus failed to demonstrate why it qualifies for the relief it seeks under Rule 433(2) of the Commission's Rules of Practice and Procedure, R

¹² It 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 GPD with none of the proposed protections in place." Consumers' Application for Leave at 6.

¹³ See Exhibit C, Consumers' Discovery Response to U21859-AG-CE-0040 sub-question a.

¹⁴ *Id* at sub-question b.

792.10433(2). The Commission should accordingly deny the Company's requested relief.

C. Significant risks to ratepayers already identified by the intervenors emphasize the importance of maintaining the scope of this proceeding as ordered by Judge Talbot.

The Company's Application for leave reiterates its position that "[c]ommission approval of the proposed amendments will not increase any rates for existing customers or the cost of service to other existing customers."¹⁵ But in even the most preliminary stages of this case, the intervenors have identified points on which the Company's initial proposed terms would raise serious risks to ratepayers. One concerning point is an apparent lack of protection as to infrastructure costs for bringing data centers online incurred before they begin taking service. The Company's application suggests that its proposed exit fee provision would not apply during the "ramp up period." Instead, the only mechanism identified by the Company for recovering infrastructure investment costs is its tariff sheet C1.4 "Extraordinary Facilities Requirements and Charges."¹⁶ That sheet presents customers with options for how they might cover extraordinary facilities costs, one of which being paying a charge "equal to one and one-half percent (1-1/2%) of the Company's total investment in such facilities." But if a data center customer were to exit prematurely during the "ramp up" while infrastructure was under construction, there is a huge risk that the Company would not cover its construction costs from the monthly 1.5% charge alone.

¹⁵ Consumers' Application for Leave at 2.

¹⁶ Exhibit D, Consumers' Discovery Response to U21859-MNSC-CE-0031 and U21859-MNSC-CE-0035, at Consumers' Discovery Response to U21859-MNSC-CE-0031.

This risk is exacerbated by the massive costs that such construction will likely entail for large data centers: Consumers states in response to discovery that it “estimates a range of \$46.5M to \$96M total costs for interconnection facilities for a new 100 MW load.”¹⁷

The Company’s discovery responses further demonstrate a general lack of analyses and calculation underpinning the assertions made in its Application. It states that “no workpapers or source documents supporting the Company’s testimony and exhibits are available,”¹⁸ and describes some of its proposals as merely the result of “benchmarking” without providing fulsome response as to how those benchmarking considerations were evaluated.¹⁹ The Company further stated in discovery that it “has not performed an analysis of potential future revenues or expenses for all the data center inquiries.”²⁰ And no terms or provisions have been produced in discovery that would explicitly protect against potential PA 235 compliance costs driven by data center load and borne by other customers.

The many risks to ratepayers emerging from the intervenors’ participation in this matter emphasize that the Commission was correct to direct a contested proceeding. Its order directing the proceeding did not limit the scope of consideration as requested by Consumers here, and the Commission’s order acknowledged that it had reviewed the intervenor’s pleadings in reaching its decision. It is thus crucial to

¹⁷ *Id* at Consumers’ Discovery Response to U21859-MNSC-CE-0035.

¹⁸ Exhibit E, Consumers’ Discovery Responses to U21859-AG-CE-0012, U21859-AG-CE-0013, and U21859-AG-CE-0016, at Consumers’ Discovery Responses to U21859-AG-CE-0012.

¹⁹ *See, e.g., Id* at Consumers’ Discovery Responses to U21859-AG-CE-0013, sub-questions ii and iii.

²⁰ *Id* at Consumers’ Discovery Responses to U21859-AG-CE-0016.

the Attorney General's role representing the public interest in this matter that she continue her participation as directed by the Commission's order and Judge Talbot's ruling.

III. Conclusion

For the reasons set forth above, the Attorney General requests that the Commission affirm the ALJ's ruling and deny the Company's requested relief.

Respectfully submitted,

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Dated: May 14, 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.

MPSC No. U-21859

**The Attorney General’s Response to Consumers
Energy Company’s Motion *in Limine***

Having failed in its request for *ex parte* relief, Consumers Energy Company now makes a second attempt to limit the scope of consideration for this proceeding. However, the Company’s Motion is premature for consideration given that no record has been developed and should further be dismissed as a mis-identified dispositive motion. The requests made in the Motion are likewise too vague and overly broad to warrant relief, and are self-contradictory in a manner that would only create confusion and inefficiency if granted. Further, the subjects raised by the Attorney General that the Company now seeks to exclude are relevant to the proceeding as ordered and under the Company’s own suggested scope. The Attorney General thus opposes the Motion and asks that it be denied.

I. Statement of Facts

Consumers Energy Company (“Consumers” or “the Company”) filed its application in this matter on February 7, 2025, seeking *ex parte* approval to add a “data center provision” to its tariff sheets.¹ In addition to proposals for tariff language, the Application included an acknowledgment that “data center customers

¹ See the header for the proposed language in the Company’s Exhibit to its Application (Sheet No. D-67.10).

are unique in that they are extremely large loads but bring more risk than other Rate GPD customers...”, and further that the various unique considerations presented by data center loads “...create a greater risk for stranded assets with respect to data center customers than exists for other Rate GPD customers.”

Several parties, including the Attorney General, then filed petitions for intervention seeking a contested proceeding on the matter and challenging the Company’s request for *ex parte* relief. The Attorney General’s Petition stated in part that a proposal for tariff language specific to data centers implicates compliance and cost considerations under Public Act 235 (“PA 235”), which establishes Michigan’s clean and renewable energy standards.² The Petition also identified MCL 205.54ee as another statute for consideration, as the statute explicitly contemplates tariff provisions to address clean-energy procurement for data centers.³

Consumers filed an “Answer” to the several intervenors’ petitions on February 28, 2025, stating that the Company’s proposals constitute “safeguards” to avoid “unacceptable risks” under its existing Rate GPD. The Company’s Answer repeated a claim from its Application that the “data center provision” is a liminal step towards development of some other data-center rate, though the Company’s filings provide no description of any timeline or transition-mechanism for that development.⁴ As to the Attorney General’s filed assertions concerning PA 235 and the clean-energy

² Attorney General’s Petition to Intervene and for a Contested Proceeding at 4-5.

³ *Id.*

⁴ *See, e.g.*, Consumers’ Answer at 2-3.

considerations of MCL 205.54ee, Consumers' Answer challenged those as unrelated and "irrelevant" to its proposals for data-center-specific tariff language.⁵

On March 13, 2025, the Michigan Public Service Commission ("MPSC" or "Commission") issued an Order on the Petitions and Answer, including that:

The Commission has reviewed the filed pleadings and applicable legal authority and finds that *ex parte* treatment of the application is not appropriate. The electric load of new data centers presents unique and significant cost implications, and the development of an evidentiary record to consider the February 7 application is prudent and reasonable. MCL 460.6a(3); *see also*, June 30, 2020 order in Case No. U-20763, pp. 69-70. Thus, the Commission grants the requests for a contested case proceeding in this matter. Mich Admin Code, R 792.10415(1).⁶

The Order further directed that the record from the contested proceeding should be fully developed by September 16, 2025.⁷ The Company filed its present Motion *in Limine* on April 8, 2025, eight days before the date set for a pre-hearing in this matter, and before the parties had even finalized a schedule for the proceeding. The Motion trots out many of the same arguments the Company raised in its Answer attempting to avoid a contested proceeding, framing these now as arguments for limiting scope of the contested proceeding as granted. However, these arguments are premature and misplaced, and the relief requested in the Motion is sweeping, vague, and self-contradictory. And as with the Company's arguments in its Answer, its Motion likewise misunderstands the relevance of the topics it seeks to exclude. The Motion should be denied accordingly.

⁵ *See Id.*, at 3-5.

⁶ U-21859, March 13, 2025, Commission order at 3.

⁷ *Id.*

II. Argument

II.A. The Company's Motion is premature and constitutes a mis-identified dispositive motion.

As an initial matter, the Company's Motion *in Limine* is premature. None of the intervening parties have filed any testimony or concrete recommendations on the record in this matter, nor has the Attorney General even informally discussed any potential recommendations with the Company. Consumers will have many opportunities throughout the course of the proceeding to raise its arguments, including in discovery objections, motions to strike, and its briefings. Further, the Commission will be reading the record in this matter and is well-equipped to evaluate the merits of the Company's arguments.

Given these many other opportunities for the Company to later present its arguments, granting its requested relief now would only be prejudicial to the other parties. It would further be contrary to the broad directive of the Commission's Order that the need for a contested proceeding follows from a review of all filed pleadings and applicable authority. This same issue has been addressed previously in a similar context: in MPSC Case U-21089, a party filed a motion *in limine* before completion of discovery, before filing of staff and intervenor testimony or rebuttal testimony, before motions to strike had been filed, and before any evidence had been admitted to the contested case record.⁸ The ALJ in that matter denied the motion, and included in its findings on the record that:

It's not clear to me what prejudice [the moving party] will suffer if its motions were not granted. [The moving party] will have the opportunity

⁸ See U-21089, transcript from August 10, 2021, motion hearing at 75.

to object to the admission of evidence to the contested case record when the evidence and testimony are offered for admission on the dates we have set aside for cross-examination. At the time the evidentiary record, at that time the evidentiary standard for the admission of evidence will be applied consistent with the Michigan Rules of Evidence as far as practicable. But be advised that consistent with the Michigan Administrative Procedures Act and the Commission's Hearing Rules, the Commission may admit and give probative effect to evidence commonly replied [sic] on by reasonably prudent persons in the conduct of their affairs. This liberal evidentiary standard has been consistently applied in all prior contested case proceedings before the Commission and it will be applied to this matter in a similar manner.⁹

The Court further found that “the granting of [the movant’s] motion would result in an inadequate record for the Michigan Public Service Commission’s final decision....”¹⁰ Given the parallel context in which Consumers brings the present Motion, the relief it seeks should be denied. Moreover, the breadth of exclusions sought by the Company smacks of a dispositive motion rather than an appropriately filed motion *in limine*; the Company rehashes several of the arguments it lost on in its request for *ex parte* relief, with the hope that the Court will grant something like a motion for summary disposition over large swaths of subject matter.

Courts in Michigan have found that this method of disguising dispositive motions as motions *in limine* presents a basis for denying such motions. *See, e.g. Dunn ex rel Albery v State Farm Mut Auto Ins Co*, 264 F.R.D. 266, 274-275 (ED Mich 2009) (finding that “[m]otions in limine “are meant to deal with discrete evidentiary issues related to trial, not another excuse to file dispositive motions disguised as motions in limine” and that “[t]he denial of a motion in limine is warranted where

⁹ *Id* at 75-76.

¹⁰ *Id* at 76-77.

the moving party seeks to argue the merits of its case and preclude the non-moving party from presenting its case”) (quoting *Agroindustrial SA DECV v Enza Zaden N Am Inc*, No. CV 05-351TUCFRZ, 2007 WL 1077023, at *1 (D. Ariz. Apr. 9, 2007) and citing *United States v. Karamuzis*, No. 02–c8707, 2004 WL 2203413, (ND Ill Sept 30, 2004); *See also Brown v Oakland Cnty*, No. 14-CV-13159, 2015 WL 5317194, at *2, *4 (ED Mich Sept 10, 2015) (citing to *Dunn*).

The Company’s Motion should be denied in light of its prematurity and mis-designation. Granting the relief requested now would only be prejudicial to the other parties given the several opportunities for Consumers to later raise its arguments, and would further result in an inadequate record for the Commission’s review.

II.B. The non-specific and self-contradictory relief requested here is improper and would cause confusion and inefficiency if granted.

Not only would granting the Company’s Motion be premature, the sweeping, non-specific relief requested would further serve as a source of confusion and inefficiency radiating throughout the remainder of the proceeding. The fact that no record has been developed means that no parameters are available for what might arguably be acceptable subject matter under the requested relief. Further, the Motion presents contradictions within its several items of relief requested. The proceeding would be mired in frequent and repeated arguments concerning the scope of relief if the Motion were granted.

Courts in Michigan and other jurisdictions have likewise held that a failure to articulate specific evidence for exclusion may serve as a basis for denial on motions *in limine*. *See, e.g., Calderon v Auto-Owners Ins Co*, No. 313367, 2014 WL 167130, at

*8 (Mich Ct App Apr 24, 2014) (finding that courts “may deny a motion in limine when it lacks the necessary specificity with respect to the evidence to be excluded”); *see also, e.g., Gray v City of Detroit*, No. 2:18-CV-12146, 2021 WL 2885807, at *3 (ED Mich July 9, 2021) (declining to issue an order *in limine* “blanketly forbidding any evidence relating” to certain claims); *see also, e.g. Nat’l Union Fire Co of Pittsburgh, Pa v LE Myers Co Grp*, 937 F Supp 276, 287 (SDNY) (finding that a motion *in limine* cannot be granted where it “lacks the necessary specificity with respect to the evidence to be excluded or the purported reason for the introduction of such evidence”).

Reviewing fact patterns from these cases illustrates that the Company’s present Motion does not pass muster. In *Nat’l Union*, for example, the movant sought to generally exclude potential testimony from various witnesses interpreting the purpose and/or meaning of certain insurance policy provisions, on the basis that the introduction of any such evidence would violate the parol evidence rule. The Court denied this request, finding that “the motion [did] not specify which evidence should be excluded or which parties intended to offer such evidence”, and further that “evidence should be excluded on a motion *in limine* only when evidence is clearly inadmissible on all potential grounds... [and] [u]nless evidence meets this high standard, evidentiary rulings should be deferred until trial.” *Nat’l Union*, 937 F Supp 276, 287 (SDNY) (quoting *Hawthorne Partners v AT & T Techs, Inc*, 831 F Supp 1398, 1400 (ND Ill 1993)). In *Calderon*, the Michigan Court of Appeals similarly denied a motion *in limine* where a movant “fail[ed] to cite a single page” of deposition

testimony it sought to exclude on the basis of lacking relevance. No. 313367, 2014 WL 167130, at *8 (Mich Ct App Apr 24, 2014). In *Gray*, the Court denied a motion *in limine* seeking to exclude “[a]ny interrogatories [sic] responses” made by the movant, as included in an exhibit, that were “relevant to any charges that have been dismissed.” No. 2:18-CV-12146, 2021 WL 2885807, at *8 (ED Mich July 9, 2021). The *Gray* Court found that “[b]ecause the [movant] has failed to specify the precise portions of [the exhibit] that it seeks to exclude, the Court denies the [movant’s] motion as to [the exhibit].” *Id.*

The lack of evidence exhibited in the present Motion outdoes the exemplary cases discussed above: since no record had been established and no witness testimony, or even informal proposals have been tendered by the Attorney General, the Company has nothing to point to for narrowing its requested relief. Denial on this point follows similar reasoning to denial on the basis of a disguised-dispositive motion: “[m]otions in limine are meant to deal with discrete evidentiary issues related to trial...”, not to attack the general scope of a proceeding. *See Dunn*, 264 F.R.D. 266, 274-275 (ED Mich 2009) (finding that “[a]ll evidence related to Defendant’s affirmative defense is not a discrete evidentiary issue”); *See also, e.g., Karamuzis*, No. 02–c8707, 2004 WL 2203413, *2-3 (ND Ill Sept 30, 2004) (finding that the movant “failed to properly support his instant motions with any citation to the record or to a hearing transcript” and further that requested exclusion of a general topic was “far too general and vague to be summarily ruled on in a motion in limine”). Consumers’ Motion should thus be denied as it misuses the premise of a motion *in limine* to

request overly-broad and vague relief rather than identify specific pieces of evidence for exclusion.

An even bigger problem for the Company is that several of its requests for exclusions directly contradict its requested scope for the proceeding. Consumers seeks to exclude "the impact of data centers on other utility requirements (e.g. compliance with the renewable energy credit standard, the clean energy standard, etc.)." But granting this exclusion would contradict the Company's other request that the scope of the proceeding should involve "... including the reasonable protections that should be put in place due to the size of the data center customer's load ***and the impacts it could cause to the Company and its other customers*** [emphasis added]." As identified in the Attorney General's Petition:

[A]n additional cost of compliance with Public Act 235 driven by data center loads could result in unjust and unreasonable costs to other customers.

Consumers has not contested this proposition from the Attorney General's Petition in either the Company's Answer or the present Motion.¹¹ Further, the Commission presumably considered this issue in its review of the petitions when evaluating the Company's request for *ex parte* relief, and did not include any language to the contrary in its Order. *See* March 13, 2025, Commission order at 3 ("The Commission has reviewed the filed pleadings and applicable legal authority and finds that *ex parte* treatment of the application is not appropriate"). These concerns as to PA 235

¹¹ Also included among the "impacts" data center loads could cause would be the effects and costs of failing to mitigate climate change through achievement of PA 235's clean and renewable energy requirements. *See, e.g.*, the Commission's March 3, 2022, Order in Cases No. U-21122, No. U-20147, No. U-20633.

compliance thus fit squarely within the Company’s proposed scope as to the impacts of data center loads, as well as the direction of the Commission in establishing a contested proceeding. To exclude these concerns from consideration would only create confusion and inefficiency, and Consumers’ Motion should be denied accordingly.

II.C. The topics from the Attorney General’s Petition that Consumers seeks to exclude are relevant to the present proceeding as ordered.

The topics that the Company has singled out from the Attorney General’s Petition—namely considerations as to renewable and clean energy under both PA 235 and MCL 205.54ee—are relevant to the development of tariff provisions concerning data centers. These topics are further relevant under the scope of proceeding Consumers has requested in its Motion, and more importantly fall within the scope established by the Commission’s Order directing a contested proceeding.

MRE 401 establishes a broad standard for evaluating evidentiary relevance (“Evidence is relevant if: **(a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and **(b)** the fact is of consequence in determining the action.”). *See also, e.g. People v Mills*, 450 Mich. 61, 66 (1995), (emphasizing that “*any* tendency” to make existence of a fact in consequence more or less probable is sufficient). Under MRE 402, all relevant evidence is generally admissible. *People v Rajput*, 505 Mich 7, 13 (2020).

The tax exemption statute targeted for exclusion by Consumers includes a section explicitly contemplating tariff provisions concerning clean energy procurement for data centers: “electric utilities . . . shall identify and, if necessary, **develop tariffs**, contracts, and other mechanisms that support the enterprise data

center in making this demonstration.” MCL 205.54ee(10)(e)(ix) (emphasis added). This language concerns the exact scenario now present before the Commission: development of tariff provisions for data centers. It therefore directly impacts the probability of facts in consequence pursuant to MRE 401 and should not be excluded.

The clean energy procurement standards of MCL 205.54ee are relevant more broadly as well, as a tariff’s ability or inability to defray compliance costs will impact the relative costs borne by other customers from new data center load. This topic is relevant under the Company’s own request in its Motion that the scope of the proceeding include “impacts [data center load] could cause to the Company and its other customers.¹²” And as discussed in section II.B. above, the same reasoning applies generally to clean/renewable energy compliance costs. To reiterate, the Company has yet to dispute that such compliance costs driven by data center load could impact the costs to other customers. Topics included within the movants own requested relief are relevant under the broad standard set out in MRE 401. *See also*, e.g., U-21089, transcript from August 10, 2021, motion hearing, at 76 (describing a “liberal evidentiary standard” for MPSC proceedings in denying a motion *in limine*); *See, also*, e.g., *Karamuzis*, No. 02–c8707, 2004 WL 2203413, *2 (ND Ill Sept 30, 2004) (“the scope of relevancy is broad”).¹³

¹² Consumers’ Motion *in Limine* at 5.

¹³ Several Sixth Circuit cases further emphasize a low bar for evidentiary relevance. *See, e.g., United States v Whittington*, 455 F3d 736, 738 (6th Cir 2006) and, e.g. *V & M Star Steel v Centimark Corp*, 678 F3d 459, 468 (6th Cir 2012) (describing the relevancy standard under the federal rules of evidence as “extremely liberal”).

Overlaying all of this, the Commission's Order denying *ex parte* relief emphasizes that the topics from the intervenors' petitions are within the scope of the proceeding. The Order acknowledges that the Commission "reviewed the filed pleadings and applicable legal authority" in reaching its conclusions. This presumably included the Intervenors' filings concerning the import of MCL 205.54ee, the cost implications of clean/renewable compliance driven by data center load, and the impact of data center load on achieving the clean/renewable requirements of PA 235. Nothing in the Commission's Order directed exclusion of any of these topics. On the contrary, the Commission's reasoning for directing a contested proceeding references a specific section of its June 30, 2020, Order in Case U-20763, which states in part that:

Moreover, due to the significant public interest and concern regarding the Line 5 Project's potential environmental impact on the Great Lakes, the Commission finds that it is in the public interest to conduct a contested proceeding.¹⁴

Here, the relevant public interests concerning data center loads include both the cost of compliance with PA 235 and issues concerning the ability to achieve Michigan's clean and renewable energy goals as established in PA 235. These topics were articulated in the Attorney General's Petition, and the Commission reviewed that Petition in its determination to direct a contested proceeding. These topics thus should not be excluded in the Company's motion.

The Company's arguments on materiality fail for the same reasons: these topics are in issue given their inclusion among the cost concerns for data center loads,

¹⁴ Case U-20763 June 30, 2020, Order at 69-70.

the Company's own requested scope, and the broad direction of the Commission's Order. *See, e.g. People v Mills*, 450 Mich 61, 67-68 (1995). To the extent the Company seeks to limit the scope here to the "pleadings," the intervenors' petitions constitute pleadings. The Company appears to have already acknowledged this in describing its responsive filing as an "Answer." Further, the Commission's order establishing a contested proceedings refers to having reviewed the "filed pleadings."¹⁵

III. Conclusion

For the reasons set forth above, the Attorney General responds that Consumers Energy Company's Motion *in Limine* should be denied.

Respectfully submitted,

Dana Nessel
Attorney General

Lucas Wollenzien

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Dated: April 14, 2025

¹⁵ While Consumers' Motion does not explicitly frame an argument under MRE 403, it states that failure to grant the Motion would be prejudicial. But this idea is directly contradicted by the findings in U-21089, as discussed above, rejecting a prejudice argument given the several opportunities for the movant to later raise its arguments. Rather, granting the Motion despite these other opportunities and the lack of a record would be prejudicial for the other parties, in addition to causing confusion and inefficiency throughout the proceeding.

PROOF OF SERVICE - U-21859

The undersigned certifies that a copy of the *Attorney General's Response to Consumers Energy Company's Motion in Limine* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 14th day of April 2025.

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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

Question:

7. For data center projects the Company intends to take service under the “data center provision” as proposed in its application:

- a. Identify such projects that are contracted projects that have been studied by the Company’s transmission provider and approved through MISO’s Expedited Project Review (“EPR”) process, and further whether each of these projects are under construction, scheduled to begin construction, or still in the engineering phase;
- b. Identify such projects that are, while not contracted, projects pending commitment that have been through a study by the Company’s transmission provider;
- c. To the extent applicable, identify whether and how each project identified in response to Sub-Questions 7.a-b above correlates to a data center identified in response to the Attorney General’s Question 4 in the Attorney General’s First Discovery Request (i.e., if it represents a project also identified in response to Question 4, and if so which project); and
- d. For each of the projects identified in response to Sub-Questions 7.a-b above, provide material and information as would be responsive to the descriptions in the Attorney General’s Sub-Questions 4.a-e in the Attorney General’s First Discovery Request (to the extent not already provided and identified in response to the Attorney General’s Question 4).

Response:

- a. There are currently no contracted data center projects that would take service under the proposed data center provision.
- b. The Company has not submitted formal interconnection requests and has not received System Impact Studies from METC for potential customers to be served under the proposed data center provision.
- c. Not Applicable
- d. Not Applicable

Witness: Laura M. Connolly

Date: May 2, 2025

Question:

15. Did Consumers consider tariff provisions requiring contributions in aid of construction for upgrades to transmission, distribution, and/or generation resources? 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 contribution in aid of construction options available as part of Rule C1.4, Extraordinary Facility Requirements and Charges.

Witness: Laura M. Connolly

Date: April 30, 2025

Question:

19. Please describe and identify the range of total interconnection costs for a prospective new customer load of 100 MW or larger.

Response:

The range of total cost for interconnection facilities for a 100 MW load vary greatly on the location of load and the network upgrades required to adequately interconnect the load while maintaining system reliability. Consumers Energy estimates a range of \$46.5M to \$96M total costs for interconnection facilities for a new 100 MW load. This range is subject to location, existing transmission capacity as determined by the Transmission Owner, and does not include additional costs for energy resources or their interconnection costs to serve the load.

Witness: Laura M. Connolly

Date: April 30, 2025

Question:

1. Please provide all workpapers and source documents supporting the Company's application, testimony and exhibits. Please provide the requested documents in electronic form with all spreadsheet links and formulas intact, source data used, and explain all assumptions and calculations used. To the extent the data requested is not available in the form requested, provide the information in the form that most closely matches what has been requested.

Response:

As of the date of this response, no workpapers or source documents supporting the Company's testimony and exhibits are available. This response will be supplemented as necessary.

Provided by Counsel

Date: April 28, 2025

Question:

2. For the purposes of this request, refer to the Company's Application.

a. Please provide all empirical analyses, studies and other documents supporting the following proposed tariff provisions:

- i. Project Proposal Fee of up to \$100,000 per project;
- ii. Fifteen-year Minimum Contract Term and five-year maximum "ramp up period," including by providing all metrics, calculations, and strategies the Company plans to use to determine what the "ramp up period" will be for each customer;
- iii. Minimum Billing Demand equal to 80 percent of contract capacity;
- iv. Allowance for a one-time reduction in contract capacity at Consumer's discretion, including by providing all metrics, calculations, and strategies the Company plans to use to assess stranded asset costs and cost shifting;
- v. Allowance for Consumers to take action if customer usage exceeds contract capacity by more than 1,000 kW;
- vi. Financial security measures, including by providing all metrics, calculations, and strategies the Company plans to use in determining financial security measures;
- vii. Exit fee equal to minimum billing demand for remaining contract term.

b. Please provide the requested documents in electronic form with all spreadsheet links and formulas intact, source data used, and explain all assumptions and calculations used. To the extent the data requested is not available in the form requested, provide the information in the form that most closely matches what has been requested.

Response:

- a.
 - i. The Company developed the administrative fee based on the estimated costs incurred for the engineering study, supply planning, project management, economic development and rates support needed to develop a project proposal. The attached spreadsheet provides an estimated project proposal fee of \$50,000. Consumers proposed to cap the fee at \$100,000 to provide flexibility based on each project scope.
 - ii. The Company proposed the 15 year minimum contract term based on the life/term of the assets needed to serve these customers and benchmarking against other utility rate structures. The Company proposed the five year ramp up period based on the timing needed to procure the assets to serve these customers. The Company will work with each prospective customer to determine the appropriate ramp up schedule based on their needs.
 - iii. The Company proposed the 80% minimum contract demand requirement based on benchmarking against other utility rate structures.
 - iv. If a customer requests a one-time reduction in contract capacity, the Company will review the upcoming load expectations to determine if the requested reduction could be supplied to another customer.
 - v. The proposal to suspend service and/or amend the contract if a customer is using 1,000 kW or more above its contracted capacity amount allows the Company to protect the integrity of its system.

Question:

5. Please provide all analyses in the Company's possession estimating future revenues from new data center load and expenses to serve these customers. Please provide the requested documents in electronic form with all spreadsheet links and formulas intact, source data used, and explain all assumptions and calculations used. To the extent the data requested is not available in the form requested, provide the information in the form that most closely matches what has been requested.

Response:

The Company has not performed an analysis of potential future revenues or expenses for all the data center inquiries.

Witness: Laura M. Connolly

Date: April 30, 2025

PROOF OF SERVICE - U-21859

The undersigned certifies that a copy of the *Attorney General's Response to Consumers Energy Company's Application for Leave to Appeal the Ruling on a Motion in Limine* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 14th day of May 2025.

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