August 21, 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:

- Initial Brief 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,

Digitally signed by Christopher M. Bzdok
Date: 2025.08.21 11:04:37 -04'00'

Christopher M. Bzdok
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CC: Parties to Case No. U-21859

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.	U-21859

INITIAL BRIEF BY

MICHIGAN ENVIRONMENTAL COUNCIL, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND CITIZENS UTILITY BOARD OF MICHIGAN

August 21, 2025

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I. INTRODUCTION

In this case, Consumers Energy Company ("Consumers" or "the Company") proposes tariff provisions under Rate GPD to protect other ratepayers from some of the potential costs and risks associated with forecasted data center load growth. These proposals, primarily designed to address the stranded asset risk associated with planning to serve new data centers, are a good first step. However, Consumers' proposed terms should be strengthened in a number of ways that are necessary to adequately protect Michigan ratepayers. Furthermore, Consumers' proposed tariff provisions fail to address significant concerns pertaining to two important subjects: (1) the insufficiency of Consumers' current cost allocation framework to protect residential and other customer classes from bearing a significant portion of the costs to serve data centers, and (2) data center customers' potential impact on Consumers' compliance with Michigan's clean and renewable energy laws.

In this initial brief, the Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and the Citizens Utility Board of Michigan (collectively, "MNSC") recommend strengthened ratepayer protections against stranded asset risks, fair and equitable allocation of costs to serve data centers, and tariff language that supports compliance with Michigan clean and renewable energy requirements. Specifically, MNSC presents our position on the following issues:

1. Tariff Eligibility. The tariff terms proposed in this case should apply to all large data centers in order to sufficiently protect other ratepayers.[1] To achieve this goal, the

[1] Consumers presented its original proposal to apply to data centers. Some of the parties in this case have advocated that the tariff should apply to all customers with loads above a certain MW threshold – calling them "large load customers" instead. MNSC take no position on that change. That said, no party has identified any type of customer other than data centers who would meet the thresholds proposed in this case, and so this brief will continue to primarily refer to data centers – with the two terms intended to be mostly interchangeable.

tariff eligibility threshold should be lowered to 50 MW, with a 75% load factor threshold for customers below 100 MW.

2. Minimum Contract Term. A twenty-year minimum contract term is necessary to cover the life of generation assets and should be adopted. The tariff terms should also include a five-year evergreen extension term.

3. Minimum Billing Demand. A 90% minimum billing demand charge requirement should be adopted to protect other ratepayers from paying for investments built to serve large-load customers' requested capacity.

4. Administrative Fee. The Commission should require Consumers to include a mandatory administrative fee to collect the full costs of preparing proposals for service to data centers.

5. Exit Fee. MNSC supports the inclusion of an exit fee requirement. The exit fee should include the expected demand charges through the rest of the contract term, in addition to Rate GPD's System Access Charge. Consumers should not be permitted to reduce an exit fee without Commission approval in a contested case.

6. Contract Capacity Reductions. Data centers should be limited to a one-time reduction in contract capacity, and that reduction should be capped at a certain amount. The Commission should also require advance notice of either 42 months or four years prior to reductions in contract capacity. Finally, a request to reduce contract capacity should be subject to review and approval by the Commission.

7. Ramp Up Period. The minimum billing demand and exit fee requirements established in this case should apply during a data center's ramp-up period.

8. Cost Allocation. A cost allocation framework should be developed in this proceeding, or through a follow-up proceeding initiated within the next six months, to ensure that the costs of serving large load customer growth will be fairly and equitably borne by such customers without whom those costs would not need to be incurred. Furthermore, the Commission should require the tracking of costs attributable to serving data center customers, and direct assignment of such costs to a new class of those customers.

9. Clean and Renewable Energy. The Commission should order Consumers to adopt tariff terms that (1) support enterprise data centers in demonstrating compliance with Public Act 207's 90% clean energy requirement for enterprise data centers to qualify for tax exemptions, and (2) ensure the portfolio of resources used to serve each data center customer satisfies Michigan's Renewable Energy Standards ("RES").

II. LEGAL STANDARD

The ratemaking process requires the Commission to balance competing interests.[2] The Commission is not bound by any particular method or formula in determining just and reasonable rates.[3] "What is important is whether the result reached is just and reasonable."[4] The Commission can "make the pragmatic adjustments which may be called for by particular circumstances."[5] As

[2] *ABATE v Public Service Comm,* 208 Mich App 248, 266; 527 NW2d 533 (1994).

[3] *Building Owners & Managers Ass'n of Metropolitan Detroit v Public Service Comm,* 424 Mich 494, 510; 383 NW2d 72 (1986).

[4] *ABATE, supra,* 208 Mich App at 266.

[5] *ABATE, supra* at 266-67, citing *Michigan Bell, supra,* 332 Mich at 36.

the applicant and proponent of an order in this case, Consumers must prove by a preponderance of the evidence that its requests are just and reasonable.[6]

III. ARGUMENT

A. Eligibility

1. The proposed tariff terms should apply to all large data center customers.

Consumers' initial Application would have applied Consumers' proposed Rate GPD terms specifically to data center customers.[7] In rebuttal testimony, Consumers witness Connolly proposed expanding eligibility to all "large load customers" that meet certain load thresholds.[8] MNSC does not object to the application of provisions arising from this case to other new large loads.[9] However, as MNSC witness Palmer testified, "there are some risks to Consumers' other customers that are more specific to data centers."[10] And no party has identified any type of customer other than data centers who would meet the load thresholds proposed in this case, so this brief will continue to primarily refer to data centers – with the two terms considered interchangeable.[11]

Robust protections are needed to protect Michigan ratepayers from the heightened stranded asset risk from data center customers. Consumers' witness Connolly testified to the Company's

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[6] *Blue Cross & Blue Shield of Mich v Milliken,* 422 Mich 1, 88-89; 367 NW2d 1 (1985).

[7] Direct Testimony of Laura Connolly, 3 Tr 80-81; Ex A-1, Consumers' Proposed Rate Book Revisions, p 3.

[8] Connolly Rebuttal, 3 Tr 91; Ex A-2, Consumers' Rebuttal Proposed Rate Book Revisions, p 3.

[9] Rebuttal Testimony of Caroline Palmer, 5 Tr 922-923,

[10] *Id*.

[11] See for example, Cross Examination of Staff witness Nicholas Revere, 4 Tr 443: "Q. [A]re you aware of any… customer on the horizon above 100 megawatts that's not a data center? A. I am currently unaware of any such potential customers."

understanding that "data centers are more inclined to reduce or eliminate electric loads than traditional Rate GPD customers," due in part to the relative ease with which they can "'pick up shop' and reduce or leave the Company's service."[12] Witness Connolly explained that "[t]hese factors create a greater risk for stranded assets with respect to data centers than exists for other Rate GPD customers."[13]

Witness Palmer provided a concrete example of this phenomenon in her rebuttal testimony, noting that Microsoft recently cancelled about 2 GW of announced data center projects, including three data centers in Ohio, one of which had been granted a tax abatement and was set to commence construction in July 2025.[14] Witness Palmer also noted that "[i]ndustry literature also considers data center customers to have a higher likelihood of shifting to a different location if grid or economic conditions are not favorable, compared to manufacturing facilities or conventional commercial and industrial loads."[15] Witness Palmer therefore emphasized that "there is a clear need for robust consumer protections and reevaluation of cost allocation methods in light of any large, unprecedented, and risky new potential customers."[16] As such, while MNSC does not object to extending the proposed Rate GPD provisions to other new large load customers, the Commission should ensure that the proposed Rate GPD terms (with the modifications discussed below) apply at least to all large data center customers.

[12] Connolly Direct, 3 Tr 86-87.

[13] *Id*. at 87.

[14] Palmer Rebuttal, 5 Tr 923-924.

[15] *Id*. at 3 Tr 924.

[16] *Id*.

2. The Commission should codify a tariff eligibility threshold of 50 MW with a 75% load factor threshold for customers below 100 MW.

Consumers originally proposed that the new Rate GPD provisions would apply to data centers "with a load of 100 MW or more at a single site or on an aggregated (more than one site in the Company's service territory) basis."[17] In witness Connolly's rebuttal testimony, Consumers modified its proposal to specify that the new Rate GPD terms would apply to customers with a load of 100 MW or more at a single site or two or more sites, each of with a load of 50 MW or greater, owned by the same entity and located within the Company's service territory.[18] MNSC supports the proposal to allow data centers to be eligible for the proposed tariff terms on an aggregated basis, which would help prevent the issue of customers "gam[ing] Consumers' proposed tariff by identifying multiple projects with less than 100 MW load as separate entities to avoid the additional proposed ratepayer protections."[19]

However, Consumers has not sufficiently explained why the proposed Rate GPD revisions should not apply to all data centers of 50 MW or greater. As Consumers witness Connolly herself explained: "The provisions the Company is proposing are intended to address very large load requests that do not qualify for the Large Economic Development provision. These tend to be 50 MW or greater."[20] Furthermore, at least four of the inquiries for potential service that Consumers received from June 2024 to June 2025 were for data centers with capacities between 50 MW and

[17] Connolly Direct, 3 Tr 81.

[18] Ex A-2, Consumers' Rebuttal Proposed Rate Book Revisions, p 3; Palmer Rebuttal, 3 Tr 92.

[19] Direct Testimony of Michael W Deupree, 5 Tr 981.

[20] Connolly Rebuttal, 3 Tr 92.

75 MW.[21] As MNSC witness Palmer testified, "[a] lower threshold would capture a broader range of potential data center customers, limiting more of the potential risk" from those customers.[22]

Consumers' proposed eligibility threshold is also relatively high compared to recently approved or proposed large load tariffs. For instance, Ohio Power Company's recently approved "Data Center Tariff" includes data center customers of 25 MW or larger.[23] The recently approved settlement agreement in Indiana Michigan Power Company's Industrial Power tariff sets a threshold of 70 MW at individual sites.[24] And Dominion Energy Virginia proposed to create a high load new rate class in its recent rate case that would include all existing and new customers with demand above 25 MW on contiguous sites and measured or expected load factor of at least 75%.[25]

In order to ensure that the proposed Rate GPD terms limit more of the potential stranded asset risks posed by data centers and similar large load customers, the Commission should adopt MNSC witness Palmer's proposal to reduce the eligibility threshold to 50 MW, with a 75% load factor threshold for customers below 100 MW.[26] While covering a broader set of data center and similar large load customers, witness Palmer's proposal would also ensure that the proposed Rate GPD terms does not unintentionally impact other sorts of commercial or industrial businesses that

[21] Palmer Direct, 5 Tr 878 (citing Ex. MEC-7, Consumers' Response to DR AG-CE-0015 Supp. 2).

[22] Palmer Direct, 5 Tr 879.

[23] Ex. AG-1.23, Ohio Power Company Schedule DCT, p 1 ("'Data Center' means a centralized facility (a) used primarily or exclusively for electronic information services such as the management, storage, processing, and dissemination of electronic data and information through the use of computer systems, servers, networking equipment, and related components that (b) has an aggregate monthly maximum demand of greater than 25,000 kW.").

[24] Palmer Direct, 5 Tr 878 (citing Order of the Commission. February 19, 2025. Cause No. 46097. In the Matter of the Verified Petition of Indiana Michigan Power Company for Approval of Modifications to Its Industrial Power Tariff – Tariff I.P. p 31.).

[25] Palmer Direct, 5 Tr 878 (citing Direct Testimony of Stan Blackwell. Dominion Energy Virginia. Case No. PUR-2025-00058. p 11.).

[26] Palmer Direct, 5 Tr 874, 879.

Consumers might wish to exclude from its proposed terms. First, as witness Palmer noted, all existing Rate GPD customers fall below the 50 MW threshold.[27] Second, the 75% load factor threshold for customers below 100 MW would exclude customers with load shapes dissimilar from data centers. As Ms. Palmer explained "[u]nlike other commercial or industrial businesses that run varying shifts of production or only operate during normal business hours, data centers require consistent, high levels of demand.[28] A 75% load factor threshold for customers between 50 MW and 100 MW would therefore help ensure that other commercial or industrial businesses are not unintentionally impacted by the new Rate GPD terms.

For the foregoing reasons, the Commission should adopt Witness Palmer's recommendation to lower the eligibility threshold for the large load Rate GPD provisions to 50 MW and add a 75% load factor threshold for customers below 100 MW.

B. Stranded asset protections: Consumers' proposals are a good start but insufficiently protective.

1. The Commission should require a minimum contract term length of 20 years.

a. A twenty-year contract term is necessary to cover the life of generating assets

Data centers bring enormous new loads that will require additional generation resources.[29] Consumers acknowledges this fact and proposed a minimum contract term meant to ensure "that the customer that is causing the assets to be procured is committing to taking service for, and paying for, the assets in place to serve them."[30] The proposed 15 year contract term is meant to

[27] Palmer Direct, 5 Tr 879.

[28] *Id*.

[29] Cross Examination of Justin Bieber, 5 Tr 711.

[30] Direct Testimony of Laura M. Connolly, 3 Tr 83.

"reasonably reflect the term of the power supply resources the Company anticipates needing to procure" to serve new large loads.[31]

MNSC agrees with this general approach, since a contract term "shorter than the life of most assets built or procured to serve data center customers could result to cost shifting to other customers" if the data center exits or reduces load after the contract term.[32] Indeed, a contract term shorter than the life of procured generating assets means data centers or other large load customers would not contribute to paying those facility costs for the full depreciation life of the assets.[33]

The typical service life of the assets that would be built or procured to serve data center customers demonstrates the need for a twenty-year contract term, rather than fifteen years. Newly built construction usually includes resources with at least a 30-year depreciation schedule, while PPAs range from 15 to 25 years.[34] In cross-examination, Consumers witness Laura Connolly agreed that the vast majority of Consumers PPAs have terms equal to or greater than 20 years,[35] which indicates the necessity of a contract term that covers at least a larger portion of the PPA's lifespan. Only a tiny number of Consumers' PPAs had terms of 15 years or less.[36] If data centers left after 15 years, existing customers would be on the hook to pay for the remaining years of the PPA or newly constructed generation.

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[31] Consumers Application, p. 8.

[32] Direct Testimony of Caroline Palmer, 5 Tr 882.

[33] *Id.*

[34] *Id.* (citing Connolly Direct, 3 Tr 83).

[35] *Id.*

[36] *Id*.

b. DCC Witness Bieber's Calculations Demonstrate the Need for a Longer Contract Term

DCC witness Justin Bieber performed analysis comparing the estimated transmission investments needed to serve a significant influx of data center customers with the incremental long-term revenues associated with the Company's proposed contract term and minimum billing demand.[37] He calculated the NPV of both the estimated transmission revenue requirement and the NPV of the minimum demand charges that would be recovered from a 10-year contract term and 70% minimum billing demand, and found that the NPV of the projected incremental transmission costs was $1,046,650,362, which is less than his calculated NPV of the minimum transmission demand revenues of $1,383,574,528.[38] Because the embedded system costs recovered through rates are high compared to incremental costs, Mr. Bieber found that an increased contract term is unnecessary.

However, Mr. Bieber makes numerous assumptions that demonstrate the uncertainty in data center costs, and the need for a longer contract term. First, the calculations include only *incremental* transmission costs, when data centers will also use transmission and existing transmission infrastructure. Secondly, the calculations ignore generation costs entirely. Finally, Mr. Bieber's calculations rely on significant estimates and projections that are far from certain.

While data centers will incur incremental transmission costs, it is unreasonable to exclude their impact on the existing and planned transmission system.[39] Not only does the existing transmission system provide extensive benefits to new customers,[40] but the additional load will

[37] Direct Testimony of Justin Bieber, 5 Tr 634.

[38] Bieber Direct, 5 Tr 638-639.

[39] Rebuttal Testimony of Caroline Palmer, 5 Tr 913-914.

[40] *See Id.* at 915-916.

likely cause significant wear and tear on existing assets.[41] Neither DCC nor the Company appeared to assess any changes that might result from the development of data center load such as "consuming a portion of the capacity import limit" which would reduce some of the "estimated LRTP benefits that would have been experienced by existing customers."[42] While witness Bieber contends that paying embedded system pricing would result in revenues that exceed incremental system costs,[43] this is not evidence for a shorter contract term, but rather evidence that embedded transmission costs are critical to include in a cost analysis. Additionally, as Ms. Palmer notes, even DCC's incremental transmission cost estimate is likely understated, as it does not include "additional transmission infrastructure required to interconnect additional generation to support the load."[44]

Perhaps more glaringly, DCC's calculations exclude generation costs, despite the fact that "Consumers will likely incur equally if not more significant generation costs to serve data center customers."[45] Mr. Bieber justified the exclusion of incremental generation investments by stating "the Company has not performed the analyses that would be necessary to identify incremental generation investments to serve new large loads." This lack of analysis of the substantial generation investments that would be necessary to serve data center load demonstrates a need for a higher minimum billing demand and contract term, not the exclusion of generation investments from any numerical analysis.

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[41] *Id.* at 914.

[42] *Id.* at 915.

[43] *Id.* at 914 (Referring to Bieber Direct, 5 Tr 639).

[44] *Id.*

[45] *Id.* at 916.

Using DCC's own workpapers and an estimated investment in new combined cycle units at $2,400/kW, MNSC witness Caroline Palmer found the NPV of generation revenues expected from an assumed 2.65 GW of large Rate GPD customers over the Company's proposed minimum contract term and minimum billing demand to total $4.6 billion.[46] Under DCC's proposed minimum billing demand and contract term this number was $2.9 billion.[47] Both numbers are significantly lower than a reasonable estimate of the installed capital cost of serving the new data center load: $8.1 billion.[48] Both the Company and DCC's proposed contract term and minimum billing demand do not assure nearly enough revenue to cover the projected generation costs the Company will need to recover. Mr. Bieber's own calculation methodology demonstrates the need for a longer contract term, especially given the uncertainty of generation cost estimates. Even in the unlikely scenario where, after the contract term, a new customer immediately replaced the original customer and began paying equivalent generation costs, both Consumers and DCC's contract term and minimum billing demand would still fall at least $1 billion short of the levelized NPV.[49]

Finally, Mr. Bieber ignores the uncertainty inherent in data center loads only when it suits his calculations. Mr. Bieber opposes developing a data center rate in this case because "significant effort and analyses are required" that are inappropriate in this case.[50] Similar, Mr. Bieber testified that it is premature to discuss cost allocation of hypothetical generation and transmission

[46] *Id.* at 918.

[47] *Id.* at 918.

[48] *Id.* at 917.

[49] *Id.* at 919.

[50] Rebuttal Testimony of Justin Bieber, 5 Tr 676.

investments,[51] yet his calculations rely on projections concerning those very investments. If there is not enough information about projected load shapes to create a rate class, as there is too much uncertainty, that points to the need to have a higher contract term to minimize these risks.

Instead of relying on calculations that in turn rely on projections that are too uncertain and ignore other costs entirely the necessary analysis does not exist, the Commission should approve a contract term based on PPA length, to ensure that a contract term covers the life cycle of new resources and costs and stranded asset risks are not dramatically shifted to current customers.

c. MNSC supports a five-year Evergreen provision

The tariff should include a five-year evergreen term. Under the evergreen term, data centers taking service under Rate GPD will automatically have their contracts extended for five years unless the customer provides a notice of termination to Consumers five years prior to the contract end date. Such large loads leaving Consumers territory without sufficiently advance notice risk shifting costs onto other customers. As MNSC Witness Palmer noted, jurisdictions across the country "have begun to recognize that it is critical to require large load customers to provide adequate advance notice of load reductions or departure to protect remaining customers," which includes notice of several years to allow utilities to appropriately plan.[52] DCC implicitly acknowledged this concern by proposing that its 15% contract reduction exemption be allowed only with 3 years notice.[53]

While Mr. Bieber acknowledged "it is reasonable for the Company to require advance notice of a large load customer's intentions following the initial contract term," he advocated for

[51] *Id.* at 683.

[52] Palmer Direct, 5 TR 890.

[53] Bieber Direct, 5 Tr 657.

leaving such extensions up to contract negotiations with the Company.[54] He stated that while three- or five-year extensions may be suitable, alternative timelines may work for other customers.[55] However, Bieber's proposal would provide far less certainty for the Company, and the Company would not itself bear the full risk, since it would seek to recover stranded asset costs from other customers.[56] Further, it is critical for transparency and the protection of ratepayers that such terms are included in the tariff in this case, rather than negotiated in secret: setting the terms of service for data centers in Consumers' territory is the purpose of this case.

In addition, the proposed Evergreen provision is a baseline. Customers can choose to extend the contract for longer, or could provide notice before the five-year term and then attempt to later renegotiate. An evergreen provision therefore provides the Company with the time to plan if necessary while keeping options open for customers.

2. Minimum billing demand (90%): To protect other customers, the Commission should require a minimum billing demand of 90%.

Consumers Energy proposes that new data center customers be required to pay a monthly minimum billing demand charge for the term of their rate contract.[57] The Company proposes that the minimum billing demand charge would be 80% of the data center's Contracted Capacity and applied to the data center's maximum demand and on peak demand.[58] According to Consumers, the minimum billing demand charge will ensure that the revenue requirements for investments in the system will be paid for by the data centers that create the need for such investments – rather

[54] Bieber Rebuttal, 5 Tr 692.

[55] *Id.*

[56] MNSC reserve rights to contest such efforts in the future should they occur.

[57] Connolly Direct, 3 Tr 83.

[58] *Id*.

than placing the risk of recovery on other customers should the data center use less electricity than anticipated.[59]

MNSC witness Caroline Palmer agrees with Consumers that data centers should pay a minimum billing demand charge – but recommends that the charge be for 90% of the contracted capacity rather than 80%, a higher minimum billing demand requirement. Ms. Palmer testifies that "Consumers does not demonstrate that an 80% minimum billing demand ensures that data centers utilize and pay for the system investments they require."[60] She notes that Consumers did not assess the potential impact of a minimum billing demand other than 80%.[61] She recounts that the Kentucky PSC recently approved a 90% minimum monthly billing demand for Kentucky Power's large load tariff;[62] and that AEP Ohio's new large load tariff sets an 85% minimum billing demand for loads above 116 MW.[63]

Ms. Palmer also testified that the minimum billing demand charge impacts cost allocation and so Consumers should reflect the minimum billing demand charge in its cost-of-service study (COSS).[64] She recommended that if the Commission does not require direct assignment of data center costs, then Consumers should adjust its COSS allocator data to include any additional demand that would have been billed to the data center class under the minimum demand

[59] *Id*.

[60] Palmer Direct, 5 Tr 883-83.

[61] *Id*. and Ex MEC-13, discovery response U21859-MNSC-CE-0037(b).

[62] Palmer Direct, 5 Tr 883-84. See:

https://psc.ky.gov/pscscf/2024%20Cases/2024-00305/20250318_PSC_ORDER.pdf.

[63] Palmer Direct, 5 Tr 884. The PUCO had not approved the AEP settlement at the time MNSC filed Ms. Palmer's testimony but has approved it since, subject to post-hearing motions. See PUCO Case No. 24-508-EL-ATA, Opinion & Order, July 9, 2025.

[64] Palmer Direct, 5 Tr 884.

requirement.[65] She noted that Dominion recently incorporated a minimum billing demand in its COSS, to better match the costs incurred with the customers causing those costs and to ensure that revenues associated with minimum billing demand charges do not artificially inflate the rate of return for the data center class.[66]

DCC witness Justin Bieber objects to the 80% minimum billing demand – calling it "unsupported and excessive" – and recommends a 70% minimum billing demand instead.[67] Bieber claims that the 80% minimum billing demand charge over the 15-year contract term – in conjunction with generation, transmission, and distribution demand charges – would exceed the NPV of the incremental long term revenue requirements for the new investments.[68]

On rebuttal, however, MNSC witness Palmer explained that Bieber only considered the incremental transmission investments needed to serve an additional 2.65 GW of data center load, rather than the full set of transmission resources required to serve the load.[69] As noted above, the full set of costs include embedded costs of the existing transmission system that would serve the data centers, and transmission costs to interconnect new generation to serve the data centers.[70] Ms. Palmer also explained that Bieber's estimate did not consider other significant system costs.[71]

As described above, Ms. Palmer estimated hypothetical incremental generation costs associated with 2.65 GW of new data center load to be $8.1 billion.[72] She demonstrated that neither

[65] *Id*. at 884-85.

[66] *Id*. at 885-86.

[67] Bieber Direct, 5 Tr 614.

[68] *Id*. at 631-38.

[69] Palmer Rebuttal, 5 Tr 913-16.

[70] *Id*.

[71] *Id*.

[72] *Id*. at 917-18.

Consumers' proposed terms nor those of the DCC come close to covering these costs over the contract term.[73] Even her own proposed 20-year contract and 90% minimum billing demand falls short of covering all of these costs.[74] Ms. Palmer concluded that the 20-year and 90% terms are the minimum that should be required to protect other customers from footing the bills left by departing data centers after their contract term.[75]

Neither Consumers nor DCC provided persuasive rebuttal on this issue. Consumers witness Laura Connolly simply noted that the Company "stands by" its initial 80% proposal, that I&M's settled large customer tariff included an 80% minimum billing demand, and that 80% falls between the Ms. Palmer's 90% recommendation and the 70% proposed by DCC.[76] DCC witness Bieber stated only that Staff witness Isakson supported the 80% minimum billing demand, and he speculated (without any facts or first-hand knowledge) that the Kentucky Power settlement cited by Ms. Palmer may not reflect the interests of new large load customers.[77] Neither Consumers nor DCC provided any quantitative analysis on rebuttal to support their positions on the appropriate level of minimum billing demand. MNSC submits that the great weight of evidence in this record supports Ms. Palmer's 90% minimum billing demand charge recommendation, and urges the Commission to adopt it in order to help reduce the extent to which Consumers' other customers may become responsible for the costs of investments necessary to serve new data centers.

[73] *Id*. at 918-19, especially Table 1.

[74] *Id*. at 919.

[75] *Id*.

[76] Connolly Rebuttal, 3 Tr 93.

[77] Bieber Rebuttal, 5 Tr 685-686.

3. Administrative fee: The Commission should require Consumers to include an administrative fee to collect the costs of preparing proposals for service to data centers.

a. Consumers' original administrative fee proposal

In its application, Consumers proposed to charge an upfront administrative fee to provide a project proposal to data centers, paid upfront and not to exceed $100,000.[78] The purpose of the fee is to collect the costs incurred by the Company for various studies, supply planning, project management and rate support needed to develop a project proposal, and would be calculated based on estimated labor hours and rates.[79]

Such a fee is important because data center customer requests typically ask for information on multiple sites and load scenarios, often at sites previously unstudied by the Company.[80] Because a lot of time and resources go into planning extensive engineering studies, and data center proposals involve evaluating more sites and without the same detailed load expectations, the company proposed an upfront administrative fee.[81]

b. MNSC recommendations to improve administrative fee

Vetting and developing data center proposals can be a costly endeavor.[82] Given both the potential costs and the speculative nature of prospective data center interest, it is important to ensure that these costs are paid by the prospective data centers, not by existing customers.[83]

[78] Consumers Application, para 3.

[79] *Id.*

[80] Connolly Direct, 3 Tr 97.

[81] Connolly Direct, 3 Tr 97.

[82] Palmer Direct, 5 Tr 893.

[83] *Id.*

To ensure fairness for both data centers and existing customers, Consumers should track actual costs and reconcile after the proposal is done, without capping the fee at $100,000.[84] Staff witness Isakson also proposed reconciling fees after the project completed.[85] Capping the administrative fee means that cost overruns or extensive proposals may not be captured by the initial fee, passing those costs to customers. In addition, MNSC witness Palmer proposed that such fees should be mandatory, and Consumers reporting should provide information on the fees assessed, their magnitude, and how they compared to actual costs.[86] These requirements would help ensure that fees are uniformly applied and prevent cost shifting.

c. Consumers' "withdrawal" of proposed administrative fee

Rather than address MNSC and Staff's proposals to strengthen the project proposal fee, the Company withdrew its request for an administrative fee, finding that a "robust intake process" has limited the number of formal study requests and it is no longer necessary to develop a process to administer and reconcile the fee.[87]

The Company put forth a few reasons in support of this withdrawal – none of which justify the change in position. First, Consumers claims the fee was development based, and while the fee was nonrefundable if the customer pays the fee then did not sign a contract, for customers who move forward with a contract, the Company will "incur additional costs to finalize the design and serve" them.[88] The Company proposed this could lead to a blurred line between proposal

[84] *Id.*

[85] Direct Testimony of David W Isakson, 4 Tr 308, 315-316.

[86] *Id.*

[87] Conolly Rebuttal, 3 Tr 101.

[88] *Id.*

development and actual design development.[89] More notably, Company witness Connolly claimed that "most of the teams that work on these proposals do not currently track their time," and doing so would be "administratively burdensome."[90]

d. MNSC position

The upfront administrative fee charged to data centers to develop a proposal is an important tariff provision that ensures costs are not shifted to other customers. Absent a way to charge data center customers, the project proposal costs are allocated to other customers.[91] Indeed, due to current methods for allocating administrative and general O&M, residential customers will pay the majority of data centers' project proposal fees.[92] This is even more egregious due to the fact that the project proposals occur before a data center takes service. This means that a prospective data center could request numerous studies without signing a contract or paying into Consumers' system, leaving existing customers on the hook. Providing a developed, engineered proposal for service to a data center confers a business benefit to the data center, who can use that information to compare various options regionally or nationally. The data center should pay for that benefit. There is no cost causation or equity justification to require Consumers' existing customers to pay for it.

Consumers' arguments for eliminating the fee are insufficient. First, the robust intake process described by Consumers has not eliminated the need for the fee. Of the 50+ project inquiries by data centers, Consumers has generated 8 formal studies since implementing the intake

[89] *Id.*

[90] *Id.*

[91] Connolly Cross, 3 Tr 231-232.

[92] *Id.*

process in February 2025.[93] The additional requirements have "narrowed the progression of the project requests as it requires a prospect to understand the scope of their project and site being considered."[94] While fewer initial inquiries may process into a study, the robust intake process requires a point of entry form and specific energy details, indicating those who proceed are more committed.[95] This means that the proposals that proceed are likely more substantive, and therefore it is even more important to ensure that these substantial costs are not passed on. In addition, the Company has only had the formal intake process for a few months.[96] It is not unreasonable to believe that as this case concludes and more data centers seek to locate in Michigan, the Company will receive a greater volume of requests.

The intake process appears to solve the blurred line problem described by witness Connolly. With more robust requirements, what would be covered by a project proposal fee is far clearer. In addition, the signing of a contract is a natural way to break costs into a project proposal versus actual design development. Eliminating the project proposal fee does not solve any blurred lines problem, instead it allows potential customers to get free services, even if they never sign a contract.

Finally, the benefits of tracking time and cost would not be administratively burdensome and would likely be beneficial even absent an administrative fee. In a discovery response, witness Connolly claimed that due to the cross-functional nature of these requests, numerous staff and department resources are required, and a standardized time tracking system would need to be

[93] Ex. MEC-30, Consumers' Response to DR MNSC-CE-0136.

[94] *Id.*

[95] *Id.*

[96] *Id.*

implemented.[97] Rather than suggest that the fee would be administratively burdensome, this response raises more questions: do the Company's employees not currently track their time when handling such requests? In addition, a standardized time tracking protocol and training should be standard administrative practice, not an extreme burden.

Even beyond an administrative fee, time tracking would be helpful, especially *because of* the cross-functional nature of these requests. Without it, it would be hard to determine who spent the most time on certain projects, evaluate the cost-effectiveness of parts of the proposal and more. If requiring an administrative fee would require the Company to do such tracking, this would have financial benefits beyond just applying the administrative fee, and as such is not a reason to withdraw the upfront fee proposal. The Commission should require the Company to charge data centers an upfront administrative fee with no cap and reconcile the costs at the end to ensure that existing customers are not subsidizing data centers.

4. The Commission should require an exit fee on terms that will protect Consumers Energy's other customers from stranded costs caused by data centers.

a. MNSC supports the inclusion of an exit fee

In their initial application, the Company proposed an exit fee, to be applied should a customer cease to take service from Consumers.[98] The initial proposed Exit Fee would be calculated by multiplying the Minimum Billing Demand by the remaining months in the contract term.[99] In rebuttal testimony, Consumers agreed that the exit fee should apply during the ramp up period.[100] The exit fee is meant to guard against the potential for significant stranded assets if

[97] *Id.*

[98] Connolly Direct, 3 Tr 84.

[99] *Id.*

[100] Rebuttal Testimony of Laura M. Connolly, 3 Tr 93.

customers cease taking service from Consumers.[101] MNSC supports the inclusion of an exit fee, and believes that additional provisions are needed to ensure the exit fee sufficiently protects customers from stranded costs.

b. The Exit Fee Should Include the System Access Charge

The exit fee should include Rate GPD's System Access Charge, designed to cover "the marginal cost of connecting a customer to the system." If a data center leaves Consumers' service territory the costs associated with its "meter and service drop would be recovered from other customers" unless another customer takes service in the same location.[102] For this reason, the exit fee should include not only the minimum billing demand but also at least the infrastructure portion of the System Access charge, which include the costs associated with the service drop, meter, and transformer.[103] Other account maintenance costs should be included unless Consumers can demonstrate it would not incur additional account maintenance components.[104] Other similar jurisdictions include customer charges in the exit fee in order to adequately protect customers.[105]

The Company opposed Ms. Palmer's recommendation, stating that "a customer's distribution infrastructure should be handled through their Contribution in Aid of Construction ("CIAC") agreement which has its own minimum demand requirements and contract termination requirements."[106] However, when asked if "the costs of a Rate GPD customer's service drop, meter, and transformer" was included in the CIAC agreement, the Company responded that they

[101] Consumer Application, p. 7.

[102] Palmer Direct, 5 Tr 887.

[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] Connolly Rebuttal, 3 Tr 94.

were not.[107] Instead, they are covered by the system access charge, something not included in the CIAC agreement. Therefore, such costs ought to be included in the exit fee calculations. Otherwise, Consumers will seek to recover them from other customers in the event of an early data center exit.

c. The Exit Fee should include the entire contract term

DCC witness Justin Bieber proposed the exit fee should be calculated by multiplying the minimum demand by the lesser of the remaining contract term or 60 months.[108] Mr. Bieber advocates for this change using calculations similar to his minimum billing demand and contract length calculations discussed above. As previously demonstrated, those calculations have numerous flaws, including the fact that Bieber only counts incremental transmission investments and excludes generation entirely – despite the fact that, as MNSC witness Palmer noted, "data center customers will not contribute sufficient revenues over the proposed 15-year term to pay for the annual, levelized costs associated with those 15 years."[109] Limiting the exit fee calculation to only five years (or even eight years if three-year notice is given) risks huge data centers leaving Consumers' territory after the utility has made very large investments to support their service, leading Consumers to seek recovery of the remaining costs from other customers. The exit fee is meant to prevent this inequity – or at least lessen its risk.

[107] Ex. MEC-26, Consumers' Response to DR MNSC-CE-0132.

[108] Bieber Direct, 5 Tr 654.

[109] Palmer Rebuttal, 5 Tr 920-921.

d. The Exit Fee Should not be reduced without Commission approval

Consumers proposes to reduce the exit fee if it determines that the loss of exit fee revenue will not harm the Company or its customers.[110] However, the Company's criteria for determining harm are not adequately supported, and ought to be subject to verification.[111] The determination of harm for both the exit fee and contract capacity reduction should be subject to the same review and approval by the Commission. Specifically, Consumers should be required to submit a filing to the Commission that parties have the opportunity to analyze in a contested case.[112] In order to ensure costs are not passed onto other customers, the filing ought to demonstrate the terminated capacity will secure offsetting expected revenues. Allowing the exit fee to be reduced without showing that no harm will come to customers puts the risk on current customers, not either the Company or data center customers, who are best able to manage it.

e. The Exit Fee should not be refundable based on Consumers offsetting lost revenues via another customer

DCC proposes that Consumers be required to make reasonable efforts to mitigate the Exit Fee by doing things like securing offsetting revenues or reducing operating costs. DCC further proposes that if the Company can later reassign the capacity or otherwise mitigate costs, the Company should refund the departed data center customer.[113] Staff also proposed that the Company should seek to reduce the exit fee with offsetting revenue, but did not include discussion about reducing operating costs or refunding departing data center customers.[114]

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[110] Ex. A-1, Large General Service Primary Demand Rate GPD Tarriff, p. 3.

[111] Palmer Direct, 5 Tr 888.

[112] *Id.* at 889.

[113] Bieber Direct, 5 Tr 654.

[114] Direct Testimony of David W. Isakson, 4 Tr 314.

While the Company should seek to mitigate harm to customers, DCC's proposals seek to effectively give data center customers preferential treatment. If Consumers secures other capacity and energy market revenues, these should be allocated "among the customer classes consistent with Consumers' established revenue allocation practices" rather than allocated to data centers through a refund or additional mitigation.[115] Contrary to DCC's proposal, Consumers cannot use a specific amount of "market revenues to offset a particular portion of data center costs" since the Company treats the entire power system as a shared resource.[116] Providing a refund to an early-departing customer is counter to this principle, and allows data center customers to get the benefits of a shared resource power system, but not the costs.

DCC's proposal, including any offsetting revenue or reduced operational costs in the exit fee mitigation, means that data centers risks are covered by the existing customers on the system, but if those risks do not materialize to the fullest extent and the Company can mitigate them it is the data centers, not existing customers, who benefit. Such allocation is preferential and inequitable. Whatever terms ultimately get adopted in this case, no data center tariff will completely eliminate the downside risks for existing customers of adding these huge new customers onto the system. Therefore, the Commission should allocate the potential upside of collecting an exit fee while offsetting some of the lost revenue as a potential benefit to Consumers' system overall – and thereby potentially to the Company's other customers – for equitable and cost causation reasons.

[115] Palmer Rebuttal, 5 Tr 921.

[116] *Id.*

5. Terms related to capacity reductions should be strengthened.

a. Reductions in contract capacity from large-load customers could shift risk and costs to other ratepayers.

In its original Application, Consumers "reserve[d] the right, at its sole discretion, to allow a one-time reduction to the Contract Capacity if requested by the Data Center."[117] Consumers explained that a "requested reduction to Contract Capacity will be granted if the reduction will not result in cost increases for the Company or its other customers, and will be documented in an amendment to the rate contract."[118] In witness Connolly's rebuttal testimony, she expressed that the Company further agreed "that it is appropriate to set both a maximum capacity reduction amount and an advance notice requirement for reductions in contract capacity."[119]

MNSC recommend that the Commission ensure that the approved Rate GPD tariff terms protect against the potential ratepayer harms from data center customers reducing contract capacity during their contract term. As AG witness Deupree explained, "[a] reduction in capacity without more protective terms [than originally proposed] could pose a large risk of cost-shifting to other customers given the size of the load and expected revenue for these customers."[120] That is because other ratepayers could be left footing the bill for investments made to support the originally requested capacity.

b. MNSC recommends additional protections for reductions in contract capacity

MNSC agrees that large-load customers subject to the new Rate GPD provisions should be limited to a one-time reduction in contract capacity and that the reduction should be capped at a

[117] Ex A-1, Consumers' Proposed Rate Book Revisions, p 3.

[118] *Id*.

[119] Connolly Rebuttal, 5 Tr 95.

[120] Deupree Direct, 5 Tr 990.

certain maximum amount. These protections would help to reduce the potential planning volatility and ratepayer risks associated with reductions in contract capacity.

MNSC also agrees with the proposal to establish an advance notice requirement for reductions in contract capacity, which would allow Consumers time to plan for reductions in contract capacity and potentially mitigate some of the associated costs. MNSC witness Palmer recommended that Consumers require large load customers to provide 42 months' advance notice before the end of the 15-year contract term.[121] However, MNSC would also support Consumers' proposed adoption of a four-year notice requirement for reductions in capacity, which witness Connolly noted would align with the Company's obligation for the State Reliability Mechanism planning period.[122]

Finally, as discussed above regarding Exit Fee mitigation, a request to reduce contract capacity should be subject to review and approval by the Commission. Parties should have the opportunity to analyze a request to reduce contract capacity in a contested case before the Commission, in order to ensure that costs are not passed onto other customers from the reduction in contract capacity. Per witness Palmer's proposal, Consumers' filing in such a proceeding would need to demonstrate that, at each level of the power system, the reduced capacity would: (1) serve new data center customers, (2) expand service to existing data center customers, or (3) otherwise secure offsetting expected revenues.[123] AG witness Deupree similarly recommended that "the tariff provisions require that the reduction be approved as part of a contested case proceeding."[124]

[121] Palmer Direct, 5 Tr 875, 891.

[122] Connolly Rebuttal, 3 Tr 95.

[123] Palmer Direct, 5 Tr 889.

[124] Deupree Direct, 5 Tr 991.

Together, these tariff terms—Commission review, a one-time limit on capacity reductions, a maximum capacity reduction amount, and an advanced notice requirement—would minimize the potential risks facing other ratepayers from large load customers reducing contract capacity.

6. To protect other customers, a minimum billing demand charge and the exit fee should apply during the ramp up period.

Several witnesses in this case recommend stronger provisions during the ramp-up period of a new data center customer contract. MNSC witness Palmer recommends that both the minimum billing demand requirement and the exit fee apply during the ramp up period.[125] Ms. Palmer explains that Consumers' original proposal in this case was not to require that new data center customers to pay minimum demand charges during the ramp up period or to pay any exit fee for terminating service during the ramp up period.[126] She recommends that both should apply.

To implement these recommendations, Ms. Palmer explained that both the minimum billing demand charge and the exit fee should be scaled to the target contract capacity during the ramp up period.[127] For example, if a new customer has a target contract capacity of 250 MW in year three of the ramp up period, the customer should be responsible for a minimum billing demand of 90% of the 250 MW; and if the customer exits during year three it should be responsible for a 15-year exit fee beginning that year based on 90% of the 250 MW contract demand for that year.[128]

[125] Palmer Direct, 5 Tr 892.

[126] *Id*. at 892.

[127] *Id*.

[128] *Id*. at 892-93.

Attorney General witness Michael Deupree similarly recommended that the exit fee apply during the ramp up period.[129] Mr. Deupree explained that without an exit fee during the ramp up period, new data center customers could circumvent the intent of an exit fee – and possibly even be incentivized to leave early before the ramp up period ends.[130] Applying the exit fee during the ramp up period would ensure that customers are committed to ongoing service with adequate planning for termination of service, thus mitigating the risk of stranded-asset costs.[131]

Staff witness David Isakson also recommended that the Commission require the exit fee to apply during the ramp-up period.[132]

Consumers Energy agreed to apply the exit fee during the ramp up period.[133] No party submitted rebuttal opposing that change. Further, no party submitted rebuttal to MNSC witness Palmer on the question of applying a stepwise minimum billing demand charge during the ramp up period. Both recommendations are prudent and would help protect ratepayers from the costs caused by the exit of a new data center customer during the ramp up period. The Commission should adopt both.

[129] Deupree Direct, 5 Tr 989.

[130] *Id*.

[131] *Id*.

[132] Isakson Direct, 4 Tr 308; Ex S-1.

[133] Connolly Rebuttal, 3 Tr 93-94; Ex MEC-16, discovery response U21859-MNSC-CE-0075.

C. Cost allocation and direct assignment of costs: The Commission Should Require in This and/or a Dedicated Follow Up Proceeding that the Substantial Costs of Serving Large Load Customers Are Fairly and Equitably Allocated to Such Customers.

1. The costs of the generation, transmission, and distribution investments that would be needed to serve large load customers are substantial.

The record is undisputed that the level of investments needed to serve new large load customers would be substantial. As Consumers' witness Connolly stated in her Direct Testimony:

> The Company has data center inquiries that total over 15 gigawatts of electric load in the economic development pipeline. These are often massive, energy intensive facilities that require large capital investments on the part of the utility.[134]

While it is extremely unlikely that anything close to 15 GW of new large load customers would actually come online in Consumers' service territory, even if less than 20% (i.e. less than 3 GW) of that load did so, the resulting costs would be in the billions of dollars. Given that the Company publicly announced during the hearing in this proceeding that it had already reached "an agreement" with an up-to-1 GW data center,[135] it seems likely that significant costs are coming down the pike.

The largest category of such costs is for the generation resources that would be needed to serve the large load customers. While the Company seeks to delay consideration of the resources and costs needed to serve large load customer growth until its 2026 Integrated Resource Plan, it provided in response to discovery in this proceeding an estimate of $544 million to serve a hypothetical 500 MW, 100% load factor customer through a PPA.[136] If the Company were to

[134] Connolly Direct, 3 Tr 81.

[135] See Ex MEC-46, CMS Energy news release, July 31, 2025, and Ex MEC-47, CMS Energy 2025 Second Quarter Results & Outlook, July 31, 2025.

[136] Palmer Direct, 5 Tr 897-98, citing Ex MEC-19 and 20C.

instead build new generation to serve these large load customers, MNSC witness Palmer estimated a cost of $1 billion to serve a 500 MW customer, and between $5.3 billion[137] and $8.1 billion[138] to serve 2.65 GW of load that the Company considers to be "more probable prospects" based on "advanced discussions with economic development and data center projects."[139] Neither Consumers nor the Data Center Coalition rebutted these cost estimates or offered any competing cost estimates of their own.

In addition to the generation investments, there would also be significant transmission and distribution costs related to bringing new large load customers onto the Company's system. In discovery, Consumers identified an estimated $730 million to $780 million in transmission infrastructure costs to interconnect 2.65 GW of large load customers, while noting that such estimate did not include costs for interconnecting new generation needed to serve such load.[140] The Company also identified between $28 million and $34 million in distribution system costs for each new 100 MW of load.[141]

[137] Palmer Direct, 5 Tr 898.

[138] Palmer Rebuttal, 5 Tr 917. As Witness Palmer explained, the $5.3 billion estimate in her Direct Testimony was a back-of-the-envelope calculation intended to highlight the potential relative magnitude of costs, while the $8.1 billion estimate in her Rebuttal Testimony was a more refined calculation that relied on more recent industry resource cost data and incorporated MISO reserve margin and capacity accreditation factors. *Id*. at 917 and n. 17.

[139] Ex. MEC-8.

[140] Ex. DCC-1.

[141] Ex. MEC-21 and Ex. AG-1.14.

2. Under Consumers' current cost allocation framework, residential and other customer classes would bear a significant portion of the costs to serve large load customers.

The evidence in the record shows that under the current cost allocation framework significant portions of the costs of serving new large load customers would fall on other customer classes. As MNSC witness Palmer details, Consumers input the production costs for the hypothetical 500 MW PPA scenario discussed above into its most recently approved cost of service model.[142] The result was an increase in production rates for every customer class, as shown in Table 1 from Ms. Palmer's testimony.[143]

Table 1: Estimated Production Rate Change With 500 MW Data Center Load

Residential	Commercial	Primary+GSG	Lighting	GPD 1
9.1%	8.8%	5.1%	4.2%	10.2%

While the Rate GPD 1 class would have the largest percentage increase in production rates, the Residential customer class would be not far behind, and every customer class would be paying for part of the costs of a PPA entered to serve the large load customer.[144]

As witness Palmer explains, the imposition of production costs on other customers that would result from the addition of significant large load customer load is due to the fact that production costs are allocated 75% on demand, based on four coincident peaks, and only 25% on energy.[145] Because data centers are expected to use near continuous power, they are responsible for a higher share of the utility's costliest resources, but are allocated a relatively lower proportion

[142] Palmer Direct, 5 Tr 899.

[143] *Id.*

[144] *Id.*

[145] Palmer Direct, 5 Tr 900.

of generation costs incurred to serve them.[146] In his Direct Testimony, MNSC witness Jester offered a simplified example illustrating how the shifting of costs onto existing customers will almost inevitably occur anytime that, as in the situation of the addition of the types of large load customers at issue here, the incremental costs per unit of service to a class of customers is higher than the embedded cost per unit of service to existing customers.[147] CEOs witness Siddique similarly explained how only a portion of the generation costs for serving new data centers would be allocated to those customers under the current cost allocation framework.[148]

It is important to note that this testimony regarding how costs for serving large load customers would be allocated under the current framework was unrebutted and not questioned at hearing. Instead, Consumers' witness Connolly agreed that the demand-weighted allocations would lead to relatively more revenue contributions from residential customers than primary customers:[149]

> Q. So the addition of generation to serve data center load will in the same sense have a relatively greater cost responsibility for the residential customer class than for the primary customer class, fair?
>
> A. I think that's fair.[150]

[146] *Id.*

[147] Jester Direct, 5 Tr 863.

[148] Rebuttal Testimony of Saad Siddique, 5 Tr 794-95.

[149] Connolly Cross Examination, 3 Tr 200-202.

[150] *Id.* at 202.

3. The Commission should take steps now to ensure that the substantial costs of serving large load customers are fairly and equitably allocated to such customers.

The Company's application in this proceeding is entirely silent on how the costs of serving the potentially unprecedented growth from data centers and other large load customers should be allocated. While the Company has offered proposals that at least try to address the risk of stranded assets in the event that projected data center load is built for but does not materialize, it ignores the very significant likelihood, detailed above, that residential and other customers will bear a significant share of the billions in dollars of costs if the data centers do materialize. That likelihood should be addressed in this proceeding, or through a follow-up proceeding initiated within the next six months, to ensure that a cost allocation framework is developed to ensure that the costs of serving large load customer growth will be fairly and equitably borne by such customers without whom those costs would not need to be incurred. Having such a framework in place will help protect Consumers' customers from bearing the costs of serving data centers and other large load customers. It will also provide a greater level of certainty and transparency for all customers who are wondering how the potential influx of a gigawatts of new load that would require billions of dollars of utility investments may impact their utility bills and finances.

As discussed in Section C.4 below, some parties offer objections to the direct allocation of costs that witnesses for MNSC and others recommend as a core element of a new cost allocation framework for large load customers. It is important to note, however, that no party has rebutted the evidence that a cost shift to residential and other customers would occur under the current framework, or even disputed the idea that cost allocation needs to addressed. Instead, various parties simply try to punt the issue to some future rate case. For example, the Company claimed in its rebuttal testimony that it "intends to file a future rate proposal which will address cost

allocation and rate design issues for new data center customers."[151] Similarly, after rebuttal, Staff noted in response to written discovery that it:

> is of the opinion that . . . certain allocation and direct assignment issues are more appropriately contemplated in rate cases, where such issues can be fully examined in the appropriate context. Any eventual cost allocations or rate recovery approved by the Commission (and Staff recommendations regarding the same) in the future may or may not align with traditional or historical allocation/recovery.[152]

Along the same lines, DCC witness claimed in rebuttal that "Cost allocation would be more appropriately addressed in the context of a rate case."[153]

While MNSC appreciates the tacit concession that the current cost of service framework needs to be re-evaluated, the proposal to ignore cost allocation issues until some future proceeding should be rejected. For one thing, the Company, which ultimately is responsible for proposing how costs should be allocated, repeatedly declined to identify a specific time when it would address cost allocation issues. Even though the present proceeding had been pending since February, the Company did not make any proposals regarding the allocation of costs for serving data centers and other large load customers in the rate case it filed in June 2025.[154] At hearing, Company witness Connolly testified that the Company has not made a "definitive decision" on when it would propose an allocation, rate schedule, or new rate class for data centers or large load customers.[155] When asked specifically about which annual rate case the Company would address the allocation

[151] Connolly Rebuttal, 3 Tr 100.

[152] Ex. MEC-40 at 1.

[153] Bieber Rebuttal, 5 TR 683.

[154] Connolly Cross, 3 Tr 204.

[155] *Id.* at 207.

issue in, witness Connolly stated, "we haven't made a determination yet of when we would file that case."[156]

Witness Connolly suggests that having actual rate contracts with large load customers signed would be a precursor to the Company making a cost allocation proposal.[157] Given how long it takes to get online the generation, transmission, and distribution projects needed to serve a major new large load customer, delaying to propose a cost allocation framework until the actual contract is signed would appear to run the risk of Consumers incurring and perhaps even seeking to recover significant costs well before a fair and equitable framework could be approved and put in place. Regardless, it is not clear from this record whether, once Consumers signs the contract with the large load customer, it could make that customer join a new rate class with a new cost allocation method. Witness Connolly agreed that doing so is not the Company's "standard practice today,"[158] and that "it's harder to go back and ask a customer to adhere to a provision that wasn't in place at the time they signed their contract."[159] While the Company apparently intended the draft electric service contract to provide for shifting a large load customer to a new rate, its witness acknowledged at hearing that "it could be made stronger."[160]

Finally, deferring the cost allocation issues to a future rate case, as opposed to a dedicated proceeding following this one, would just add to the expansiveness and complexity of rate cases that are already taxing the resources of all involved. As Staff noted in comments in Case No. U-21637 in September 2024:

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[156] *Id.* at 211-212.

[157] *Id.* at 212.

[158] Connolly Cross, 3 Tr 219.

[159] Connolly Cross, 3 Tr 180.

[160] *Id.* at 219-220, citing Ex. MEC-33.

> Rate cases have undergone an extraordinary expansion in size over the past seven years. The increased number of issues and increased number of intervenors have made the 10-month timeframe more challenging in recent years and put a strain on the resources of the Commission and its Staff.[161]

To the extent that the Commission declines to address cost allocation issues in the present proceeding, a more thorough and timely evaluation of a fair and equitable cost allocation framework is far more likely to occur in the context of a separate proceeding which should be initiated within six months after the final order in this case, rather than delayed to a future rate case. As Staff have noted, such separate proceedings "often have the benefit of time, or specifically the lack of a statutory deadline to analyze and rule on the issues."[162]

4. The Commission should require the tracking of costs attributable to serving large load customers, and direct assignment of such costs to a new class of those customers.

In their testimony, MNSC witnesses Palmer and Jester highlight how the most effective way to minimize the shifting of costs discussed above is for the Company to track the generation, transmission, and distribution costs attributable to serving data center and other large load customers, and then to directly assign any such attributable costs to those customers as a class. One way to do so is for Consumers to model an optimal system expansion plan both with and without large load additions, which would clearly identify the incremental costs imposed by the large load customers.[163] Those incremental costs could then be directly assigned to large load customers by designing the applicable tariff rate to collect the revenue requirement associated with such incremental costs.[164] By doing so, the Company would be more directly following cost

[161] Ex. MEC-43 at 3.

[162] *Id.* at 9.

[163] Palmer Direct, 5 Tr 902.

[164] *Id.*

causation principles, while also avoiding the subjectiveness and imprecise nature of traditional cost of service studies.[165]

As MSNC witness Jester explained, another option for direct assignment of costs is for Consumers to serve large load customers with a "bespoke" resource portfolio – i.e. a portfolio made for a particular customer or user – and then directly allocate those costs to those customers.[166] In addition to minimizing the shifting of costs to residential and other customers, a bespoke portfolio approach would also help ensure compliance with the state's renewable and clean energy standards.[167]

Other parties also supported direct assignment of costs attributable to the large load customers. For example, CEOs witness Siddique testified that he supports witness Palmer's proposal to create a new rate class for large load customers through which attributable costs would be directly assigned, stating that her "approach ensures fairness, transparency, and compliance with legislative requirements that prohibit cost-shifting to residential or other customers."[168] Attorney General witness Deupree called for direct assignment of all distribution and transmission investments needed to serve large load customers,[169] noted that requiring the Company to enter into contracts with large load customers to provide them with at least 60% renewable energy would help avoid shifting costs to other customers,[170] and testified that a new rate for large load customers

[165] *Id*. at 897.

[166] Jester Direct at 863.

[167] *Id.* at 859-60.

[168] Siddique Rebuttal, 5 Tr 796-98.

[169] Deupree Direct, 5 Tr 988.

[170] *Id.* at 992-93; Deupree Rebuttal, 5 Tr 1015.

should be created and used to "ensure that costs associated with system upgrades that can be directly allocated to these new large load customers are directly assigned to these customers."[171]

Both DCC witness Bieber and Staff witness Revere objected to the direct assignment of costs proposals, arguing that generation and transmission investments are not utilized by a single customer or group of customers to which costs can be directly assigned.[172] Instead, those investments serve the utility's system as a whole and, therefore, their costs should be socialized across the system as a whole. To do otherwise would, in witness Bieber's telling, be a "significant departure" from current cost allocation practices.[173]

What these objections miss is that the magnitude of the potential load and cost to serve such load makes the situation with data centers and other large load customers virtually unprecedented and simply not a good fit for the traditional cost allocation methods that witnesses Bieber and Revere describe.[174] CEO witness Siddique summarizes this well, identifying three critical ways in which the data center load growth situation "is fundamentally different than traditional incremental load scenarios."[175] These reasons include: (1) the unprecedented scale of anticipated data center load; (2) the fact that the "vast majority of new generation and transmission investments are being driven almost entirely by a small number of large, discrete data center loads, rather than by diffuse, system-wide demand growth," and (3) the unique high load factor and 24/7 demand profile of data centers.

[171] Deupree Rebuttal, 5 Tr 1015-16.

[172] Rebuttal Testimony of Nicholas M Revere, 4 Tr 417; Bieber Rebuttal, 5 Tr 680, 682.

[173] Bieber Cross, 5 Tr 732, 733, 740, and 743.

[174] Palmer Direct, 5 Tr 895, 897.

[175] Siddique Rebuttal, 5 Tr 792-95.

Given that traditional cost allocation methods simply do not fit the large load customer situation at issue here and would lead to significant shifting of costs to residential and other customers, the Commission should adopt the recommendations of witnesses Palmer and Jester regarding tracking of costs attributable to large load customers and direct allocation of costs to a new class of those customers. If the Commission declines to do so on this record, then MNSC respectfully requests, as detailed in Section C.3 above, that the Commission order the opening of a special proceeding within six months of the final order in this case so that there can be a full and timely evaluation and determination of a fair and equitable framework for allocating and/or directly assigning the costs of serving large load customers.

D. Renewable/ clean energy: The Commission Should Order Consumers to Include Tariff Language That Supports Compliance with Michigan Clean and Renewable Energy Requirements Under Public Acts 207 and 235.

In addition to approving the strengthened ratepayer protections and addressing the cost allocation issues described above, the Commission should ensure that the modified Rate GPD includes provisions to ensure that achievement of Michigan's renewable and clean energy standards is advanced, rather than undermined, as new data center customers come online.

Time is of the essence to address the impact of data center load on Michigan's clean and renewable energy requirements, and this proceeding is a timely and appropriate vehicle for incorporating clean and renewable energy-related terms.[176] Consumers has already had "advanced discussions" with 2.65 GW of "economic development and data center projects that are considered to be more probable prospects."[177] And on July 31, 2025, Consumers announced that it had

[176] See MNSC Resp. to Consumers' Motion in Limine, p 8-12; MNSC Resp. to Consumers' Motion for Leave to Appeal the Ruling on Consumers' Motion in Limine, p 9-13.

[177] Ex MEC-8, Consumers' Response to DR DCC-CE-0052, p 1.

"reached an agreement with a new data center, which is expected to add up to 1 gigawatt of load growth in our service territory."[178] If anything close to Consumers' anticipated data center load were to come online it would, as we detail below, increase Consumers' compliance obligations under the state's Renewable Energy Standards by millions of kilowatt hours ("kWhs") per year starting in 2030. And to the extent that any of this potential new load qualifies as enterprise data centers that are entitled to significant tax breaks, such data centers will need to procure sufficient clean energy to meet 90% of their electric usage.

Given the enormity of the amounts of renewable and clean energy that would need to be procured to serve whatever data center load materializes, early planning will be critical to ensuring that state standards are complied with and done so in a manner that does not shift significant compliance obligations and costs onto other customers. However, on cross-examination, Consumers witness Connolly testified that Consumers is not yet planning for Rate GPD data center customers in a renewable energy plan.[179] Witness Connolly also acknowledged on cross that, if renewable energy requirements are not addressed within the framework of this case, she did not "know specifically that there's enough time" to make renewable energy procurements after signing data center contracts.[180]

Now is the time to incorporate data center tariff and contract language that aligns with Michigan's clean and renewable energy requirements. Specifically, the Commission should order

[178] Ex MEC-46, Press Release: CMS Energy Announces Strong Second Quarter Results, Reaffirms 2025 Adjusted EPS Guidance, p 1. See also, Ex MEC-47.

[179] Connolly Cross-Examination, 3 Tr 241 ("I don't know all the assumption that went into the current REP case. But . . . a signed contract is a trigger of kind of planning going forward. And given that we don't have customer signed on the data center contract today, I think it would make sense that we're not planning for them in a renewable energy plan yet.").

[180] *Id* at 3 Tr 243-244.

Consumers to adopt tariff terms that (1) support enterprise data centers in demonstrating compliance with Public Act 207's 90% clean energy requirement to qualify for tax exemptions, and (2) ensure the portfolio of resources used to serve each data center customer at least match the renewable energy percentages required by Michigan's Renewable Energy Standards ("RES").

5. Rate GPD should support enterprise data centers seeking to qualify for statutory tax exemptions by procuring 90% clean energy.

Public Act 207 ("PA 207") exempts broad categories of data centers—referred to as "enterprise data centers"—from sales or use taxes through the year 2050.[181] To qualify for the exemptions as an "enterprise data center," a data center must demonstrate that it will procure "clean energy" – as that term is defined in Section 51 of Public Act 295 of 2008 – equal to at least 90% of its forecasted electricity usage on an annual basis.[182] 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, and/or participation in a voluntary green pricing program.[183] Critically, PA 207 places a portion of the burden for ensuring compliance with this statute on utilities including Consumers, stating that electric utilities and other providers "shall identify, and, if necessary, develop tariffs, contracts, and other mechanisms that support the enterprise data center in making this [clean energy] demonstration."[184]

As MNSC witness Jester testified, Consumers Energy's Rate GPD "proposal is not responsive to this requirement, simply failing to address it."[185] The draft Rate GPD service contract

[181] MCL 205.54ee(1), (4); Jester Direct, 5 Tr 854.

[182] MCL 205.54ee(10)(e)(ix). Public Act 235 of 2023 amended PA 295; Jester Direct, 5 Tr 855-856.

[183] MCL 205.54ee(10)(e)(ix)(A)-(C); Jester Direct, 5 Tr 855-856.

[184] MCL 205.54ee(10)(e)(ix); Jester Direct, 5 Tr 855-856.

[185] Jester Direct, 5 Tr 857.

that Consumers produced in discovery likewise failed to address this tax exemption requirement.[186] As a result, Consumers Energy's Rate GPD proposal does not satisfy its obligation to develop tariffs, contracts, and other mechanisms that support an enterprise data center in demonstrating that it uses clean energy for at least 90% of its power supply.[187]

Consumers has also not identified any specific future proceeding in which it will develop such tariffs, contracts, and other mechanisms necessary to support enterprise data centers' compliance with the 90% clean energy requirement. Instead, Consumers witness Connolly simply stated that "the Company will ensure compliance through the cases specifically designed to address these issues, including the Renewable Energy Plan and the Integrated Resource Planning cases."[188] Yet Renewable Energy Plan ("REP") and Integrated Resource Planning ("IRP") cases are not the types of dockets where tariff and contracting provisions are developed and, regardless, punting the issue on the basis of vague claims that it will be dealt with later provides little assurance that the enterprise data centers would be supported in demonstrating compliance with the requisite 90% clean energy standard.

As a range of witnesses testified, Rate GPD should be modified to require that enterprise data centers comply with the 90% clean energy standard and the resulting service agreements should establish how such compliance will be achieved. For example, MNSC witness Jester recommended in his Direct Testimony that "Consumers Energy's contract with a data center that seeks to qualify for sales and use tax exemption should specify that and how Consumers Energy will supply, and the data center will procure, clean energy annually that, through a combination of

[186] *Id*. (citing Ex MEC-2, Consumers' Response to DR AG-CE-0014 and Attachment).

[187] Jester Direct, 5 Tr 858.

[188] Ex MEC-31, Consumers' Response to DR MNSC-CE-0137, p 1.

VGP projects, long-term contracts, and data center self-supply, exceeds 90% of the data center's load."[189] Mr. Jester further recommended that the Commission "obligate Consumers Energy to supply clean energy for at least 90% of the data center load when data centers are seeking sales and use tax exemptions, preferably through a portfolio of bespoke resources."[190]

The Attorney General's witness Michael Deupree likewise recommended incorporating this PA 207 requirement into Rate GPD for data centers seeking to be eligible as an enterprise data center under MCL 205.54ee.[191] As witness Dupree explained, "[t]his will help to reach the state's clean energy goals as set forth under PA 235 as well as mitigate the risks of compliance cost shifting to other customers."[192] Even the Data Center Coalition's witness Ramirez offered "support [for] the requirement that data center customers meet the 90 percent clean energy threshold to qualify for sales and use tax exemptions."[193]

Given the statutory requirement to support compliance with PA 207's clean energy standard through tariffs and contracting provisions, and the importance of early planning to ensure such compliance, the Commission should order Consumers to incorporate Rate GPD language requiring that a data center that seeks to qualify for sales and use tax exemptions will be served by—and/or procure—a resource portfolio that includes at least 90% clean energy.

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[189] Jester Direct, 5 Tr 859.

[190] *Id*. at 5 Tr 866.

[191] Deupree Direct, 5 Tr 994.

[192] *Id*.

[193] Ramirez Rebuttal, 4 Tr 512; see also Ramirez Cross-Examination, 4 Tr 517-518 (Q: "[T]o clarify[] the statement of your supporting that requirement, to the extent that that also applies to MNSC's witness testimony would you also say that you support that requirement?" A: "Yes").

6. Rate GPD Should Require the Company and Data Center Customers to Proactively Plan to Meet Michigan's Renewable Energy Standard.

The PA 207 clean energy requirement applies only to data centers seeking qualification as "enterprise data centers" to receive the benefit of PA 207 tax exemptions. However, other Michigan renewable energy requirements will be impacted by all new data center load. These include the state's RES, which requires that 15% of Consumers' electricity sales be from renewable sources through 2029, 50% of its sales be from renewable sources in each of the years 2030 through 2034, and 60% of its sales be from renewable sources in 2035 and thereafter.[194] The Commission should order Consumers to include tariff provisions that support Consumers' achievement of these standards as new data center customers come online.

Presently, Consumers must abide by the 15% RES that applies through 2029. However, this 15% requirement is not the only benchmark relevant to the present proceeding. Under Consumers' proposed 15-year minimum contract term, a data center customer beginning service today would remain on Rate GPD through 2040, thereby implicating the 2030 50% RES and 2035 60% RES.[195] Furthermore, Consumers anticipates needing to invest in new long-term generation resources to serve new data center load, which would impact Consumers' generation mix well into the future. Consumers witness Connolly has explained that Consumers "must make significant investments in capacity, energy, and distribution to serve the requested data center load," and that "[m]any of these investments are long term in nature, such as Power Purchase Agreements ("PPAs") and/or building generation assets."[196] As Ms. Connolly testified, "[s]elf build

[194] MCL 460.1028.

[195] As noted above, MNSC recommends the Commission adopt a longer, 20-year minimum contract term. See Palmer Direct, 5 Tr 847.

[196] Connolly Direct, 3 Tr 83.

construction of new assets generally includes resources with a 30 year or greater depreciation schedule while PPAs are generally 15- to 25-year agreements."[197]

CEOs witness Siddique explained in his Direct Testimony that "[l]arge new loads such as those covered by the GPD amendment will materially affect the Company's ability to meet its statutory renewable and clean energy obligations due to the size of the potential new load and the speed at which it will be coming online."[198] As mentioned above, Consumers has stated that it has 2.65 GW of "economic development and data center projects that are considered to be more probable prospects."[199] Subtracting the 1.145 GW of Industrial LED load forecasted in Consumers' most recent Renewable Energy Plan ("REP") from this 2.65 GW total leaves 1.505 GW of "more probable" data center prospects.[200] As CEOs witness Siddique calculated in his Direct Testimony, Consumers would require an additional 6,850,302 additional megawatt-hours ("MWh") per year of renewable energy in 2035 to serve this 1.505 GW of more probable data center prospects while complying with the 60% RES.[201] If this 6,850,302 additional MWh/year was met entirely with

[197] *Id*. In fact, as Ms. Connolly testified on cross-examination, fifteen of Consumers' current PPAs have 35-year terms, with the majority of Consumers' PPAs having a 20-year term. Connolly Cross-Examination, 3 Tr 194-197 (discussing MEC-27, Consumers' Response to DR MNSC-CE-0133 & Attachment).

[198] Siddique Direct, 3 Tr 774.

[199] Ex MEC-8, Consumers' Resp. to DR DCC-CE-0052.

[200] Consumers witness Connolly has expressed that the 2.65 GW of more probable economic development and data center projects "include potential load additions on rate LED and potential data center load." Connolly Cross-Examination, 3 Tr 240. Specifically, this number includes 1.145 of forecasted Rate LED load. Ex AG-1.17, Consumers' Response to DR AG-CE-0147, p 11. At times in their respective testimonies, both witness Connolly and witness Siddique imply that Consumers has planned for 1.145 GW of forecasted data center load under Rate LED in Consumers' latest REP. See Connolly Rebuttal, 3 Tr 102 ("As Mr. Siddique points out in his testimony, the Company's latest REP, Case No. U-21816, includes sufficient renewables to meet an expected 1,145 MW of data center load by 2032."); Siddique Direct, 5 Tr. 777. However, the 1.145 GW figure includes all forecasted industrial load additions under Rate LED, not only data center load, with the potential data center load planned for in in the latest REP being less than 1.145 GW. Connolly Cross-Examination, 3 Tr 233-241.

[201] Siddique Direct, 5 Tr 777. Consumers would need approximately 3,425,151 additional MWh/year of renewable energy in each of the years 2030 through 2034 to comply with the 50% RES. This 3,425,151 MWh/year estimation is calculated as 50% of the anticipated 11,417,170 MWh/year of incremental data center load, though this figure would

incremental wind energy, it would require an additional 2,697 MW of wind generation.[202] If met entirely with incremental solar energy, it would require an additional 3,400 MW of solar generation.[203] Consumers has not planned for this additional 6,850,302 MWh of additional renewable energy in its most recent REP.[204]

Crucially, the potential impact of 1.505 GW of new load calculated above is *far* less than the potential impact of the 15 GW of data centers in Consumers' economic development queue.[205] If only 20% of that economic development queue—or 3 GW of new data centers—manifests as signed Rate GPD customers, the renewable energy impacts calculated in the preceding paragraph would roughly double. Consumers would need 13,655,088 additional MWh/year of renewable energy in 2035 to comply with the Renewable Energy Standard,[206] correlating with an additional 5375 MW of wind generation[207] or an additional 6777 MW of solar generation.[208] This represents a roughly 54.8% increase over the 24,920,424 MWh of RECs Consumers is currently planning to

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vary somewhat based on the Industrial LED load planned for each year in the Company's latest REP. See *id.*; Ex MEC-37, U-21816 Exhibit A-6, p 1.

[202] Calculated as 6,850,302 MWh/year of incremental data center renewable energy usage divided by (8,760 hours x 0.29 assumed capacity factor). See Siddique Direct, 5 Tr 776-777.

[203] Calculated as 6,850,302 MWh/year of incremental data center renewable energy usage divided by (8,760 hours x 0.23 assumed capacity factor). See *id*.

[204] Connolly Cross-Examination, 3 Tr 241 ("I don't know all the assumption that went into the current REP case. But . . . a signed contract is a trigger of kind of planning going forward. And given that we don't have customer signed on the data center contract today, I think it would make sense that we're not planning for them in a renewable energy plan yet.").

[205] Connolly Direct, 3 Tr 81, 85.

[206] 3 GW of data center load would correlate with annual energy use of roughly 22,758,480 MWh/year, based on a calculation of 3000 MW x 8,760 hours/year x 0.866 assumed load factor. 60% of 22,758,480 MWh/year is 13,655,088 additional MWh/year of renewable energy. See Siddique Direct, 5 Tr 776.

[207] Calculated as 13,655,088 MWh/year of incremental data center renewable energy usage divided by (8,760 hours x 0.29 assumed capacity factor). See *id*. at 5 Tr 776-777.

[208] Calculated as 13,655,088 MWh/year of incremental data center renewable energy usage divided by (8,760 hours x 0.23 assumed capacity factor). See *id*.

procure in 2035 pursuant to its most recent REP,[209] and far exceeds the 3.8 million MWh of RECs Consumers had procured in 2023.[210]

The impact of data center load on Consumers' renewable energy obligations should be dealt with now, in this docket, rather than deferring consideration of this impact to future proceedings including IRPs and REPs. As CEOs witness Siddique testified, "ignoring RES compliance in this docket and waiting for a future proceeding would result in more costs and risks for Michigan ratepayers. The very large additional REC obligations resulting from projected growth in data center load will require a shift in planning strategy given both the scope and speed of growth from data centers."[211]

Delaying consideration of the impact of data center load on Michigan's renewable energy standards could make meeting those standards in the future more challenging and costlier. As MNSC witness Jester explained, "[a] portfolio of resources to serve data centers that falls materially short of the renewable and clean energy standards that each utility must meet will make it harder for Consumers Energy to comply with the clean and renewable energy standards."[212] That's because "if the portfolio of resources falls short of meeting those standards, then Consumers Energy will have to exceed the standards for the rest of their customers in order to be in overall compliance with the standards."[213] CEOs witness Siddique likewise disapproved of the prospect of waiting until the Company's 2026 IRP to begin addressing the renewable energy needs driven by data center load growth, noting that "the new generation in that [2026 IRP] docket may not

[209] *Id*. at 5 Tr 777.

[210] *Id*.

[211] Siddique Direct, 5 Tr 778.

[212] Jester Direct, 5 Tr 860.

[213] *Id*.

come online until many years later," and that "[d]elaying action until the next IRP could lead to rushed procurements, higher costs, and more risk for Consumers Energy and its customers."[214] For the same reason, Consumers should not wait until its next REP proceeding to begin planning to serve Rate GPD data center load growth.

Notably, on cross-examination, DCC witness Ramirez agreed with this potential impact of new data center load on Consumers' ability to comply with its renewable energy standards. When asked about a scenario in which a large data center customer receives renewable energy below the respective RES thresholds, witness Ramirez agreed that Consumers would be forced to either reduce the amount of renewable energy headroom available for other customers or procure additional renewable energy to serve those other customers.[215] In such a scenario, Consumers might also be forced to seek an extension of its renewable energy credit portfolio deadlines under PA 235.[216] That scenario would undermine Michigan's renewable energy and climate goals by delaying compliance with the RES, and Consumers' witness Connolly herself acknowledged that if renewable energy requirements are not addressed within the framework of this case, she did not "know specifically that there's enough time" to make renewable energy procurements after signing data center contracts.[217]

For that reason, MNSC witness Jester recommended that the Commission "[r]equire that new data centers, regardless [of] whether they are seeking tax benefits under 2024 PA 207 and 2024 PA 181, be served with portfolio of resources that is at least 60% renewable so as to avoid

[214] Siddique Direct, 5 Tr 782.

[215] Ramirez Cross-Examination, 4 Tr 519-523.

[216] See MCL 460.1032 ("Upon petition by an electric provider, the commission may, upon a showing of good cause, grant an extension of a renewable energy credit portfolio deadline under section 28. Each extension shall not exceed 2 years. An extension of a deadline does not affect a subsequent deadline.")

[217] Connolly Cross-Examination, 3 Tr 243-244.

making it more difficult for Consumers Energy to comply with renewable energy standards,"[218] and that Consumers "demonstrate that new resources acquired to serve new data center load are compatible with Consumers Energy's compliance with renewable and clean energy standards.

In her rebuttal testimony, DCC witness Ramirez expressed concern about what she viewed as a recommendation for an "accelerated target" in Mr. Jester's testimony,[219] which she viewed as calling for large load customers to be required to achieve the 60% renewable energy target prior to the statutorily-mandated 2035.[220] But the Commission could order Consumers to adopt tariff language that aligns with the PA 235 timeline of 15% renewable energy through 2029, 50% from 2030 through 2034, and 60% starting in 2035. On cross-examination, Ms. Ramirez expressed that such a tariff requirement that aligns with the statutory RES timeline would resolve her concern about Mr. Jester's proposal, and that she wouldn't "have an opinion either way" on such a proposal.[221]

To ensure that new data center load does not undermine Consumers' RES obligations under PA 235, the Commission should adopt Mr. Jester's recommendation and order Consumers to incorporate language in Rate GPD requiring that each data center customer will be served by a portfolio that meets the RES benchmarks. The Commission should also order that the electric service agreements between Consumers and data center customers include a plan for ensuring that those benchmarks are met through a combination of data center self-supplied resources, long-term contracts for renewable resources, and/or Voluntary Green Pricing ("VGP") program resources. Importantly, these requirements would not preclude the Commission and Consumers from

[218] Jester Direct, 4 Tr 866.

[219] Ramirez Rebuttal, 4 Tr 514.

[220] Ex MEC-44, Consumers' Response to DR MNSC-DCC-3.1g, p 3.

[221] Ramirez Cross-Examination, 4 Tr 526-529.

continuing to consider clean and renewable energy resource decisions for data centers in future proceedings. Rather, these requirements would ensure that such considerations are included in all aspects of Consumers' planning for new data center load. Doing so is critical to both ensuring compliance with state law, and minimizing the chances that an influx of new data center load would impose substantial additional compliance obligations and costs on other customers.

IV. CONCLUSION

For the reasons discussed above, MNSC respectfully requests that the Commission adopt the following requests for relief:

1. Establish a tariff eligibility threshold of 50 MW, with a 75% load factor threshold for customers below 100 MW.

2. Establish a twenty-year minimum contract term, with a five-year evergreen extension.

3. Establish a 90% minimum billing demand requirement.

4. Establish a mandatory administrative fee to collect the full costs of preparing proposals for service to data centers.

5. Establish an exit fee requirement that includes the expected demand charges through the rest of the contract term, in addition to Rate GPD's System Access Charge. Disallow Consumers from reducing an exit fee without Commission approval in a contested case.

6. Establish a capacity reduction provision that limits large-load customers to a one-time reduction in contract capacity, capped at a certain amount, and that requires

advance notice of either 42 months or four years prior to reductions in contract capacity. Disallow reductions in contract capacity without Commission approval in a contested case.

7. Establish a ramp-up period term that incorporates the minimum billing demand and exit fee requirements.

8. Require a cost allocation framework to be developed in this proceeding, or through a follow-up proceeding initiated within the next six months, to ensure that the costs of serving large load customer growth will be fairly and equitably borne by such customers without whom those costs would not need to be incurred.

9. Require the tracking of costs attributable to serving large load customers, and direct assignment of such costs to a new class of those customers.

10. Establish a tariff term that supports enterprise data centers in demonstrating compliance with Public Act 207's 90% clean energy requirement for enterprise data centers to qualify for tax exemptions.

11. Establish a tariff term that ensures the portfolio of resources used to serve each data center customer satisfies Michigan's Renewable Energy Standards.

12. Require that electric service agreements between Consumers and data center customers include a plan for ensuring that Renewable Energy Standards are met through a combination of data center self-supplied resources, long-term contracts for renewable resources, and/or VGP program resources.

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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 **Initial Brief by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan** was served on the following:

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The statements above are true to the best of my knowledge, information and belief.

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