



ENVIRONMENTAL LAW & POLICY CENTER

August 21, 2025

Via E-File

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

RE: MPSC Case No. U-21859

Dear Ms. Felice:

Attached for paperless electronic filing is the Opening Brief of The Ecology Center, The Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar (collectively the “Clean Energy Organizations” or “CEO”). Proof of Service is also attached.

Sincerely,

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**STATE OF MICHIGAN
MICHIGAN PUBLIC SERVICE COMMISSION**

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

**OPENING BRIEF OF
THE ECOLOGY CENTER, THE ENVIRONMENTAL LAW & POLICY CENTER,
UNION OF CONCERNED SCIENTISTS, AND VOTE SOLAR**

August 21, 2025

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I. Introduction

Consumers Energy's ("Consumers" or "the Company") application and testimony recognize that service requests from data centers and other large loads present high stakes for the Company and its customers. The Company identifies 15 gigawatts of inquiries, calling the volume of requests "unprecedented." Connolly Direct, 3 TR 81. The Company's proposals include important measures to shield itself and its customers from the threat of stranded assets resulting from large load requests that may not materialize.

However, the Company's sole focus on financial and contracting terms in its application neglects other important aspects of large load interconnection, such as (1) the amount and type of new generating capacity needed to power these new loads, (2) the criteria Consumers will use to study and connect these new large loads to the grid, and (3) how the Company will allocate the costs to interconnect these customers. The Company stands at the precipice of significant grid transformation, adding load that will reshape its generation portfolio and strain its already taxed infrastructure. Under these circumstances, it is important for the Commission to ensure that the Company and large-load customers are taking proactive steps together to promote load flexibility and new clean energy resources at the time new projects are proposed. Unfortunately, the Company proposes to take a wait-and-see approach, relying on future rate cases, renewable energy plans, and integrated resource plans to address resource adequacy and Michigan's clean energy goals.

But the record evidence introduced by the CEO¹ and other Intervenors clearly demonstrates that waiting for future cases will result in more costs and more risk for the rest of the Company's electric customers, even though they are not the ones causing these costs, and potentially jeopardize grid reliability and the Company's ability to meet state-mandated clean energy goals.

¹ The CEO or Clean Energy Organizations includes the Ecology Center, the Environmental Law & Policy Center, the Union of Concerned Scientists and Vote Solar.

The CEO recommend the prudent approach of incorporating clean energy related terms into the updated Rate GDP tariff for large loads, including by requiring potential large load customers to provide Clean Energy Sourcing Plans at the time they apply for electric service and by facilitating ease of access to the Company's Voluntary Green Pricing ("VGP") program. The CEO also recommend that the Commission direct the Company to develop transparent load interconnection standards to ensure safe and reliable electric service and appropriate cost allocation for new large loads. The CEO recommend starting with a working group that can identify best practices for load interconnection, including a process that streamlines the interconnection process for large loads that incorporate load flexibility and/or clean generation. Finally, the CEO recommend that the Commission order the Company to open up a new rate exclusive to large load customers founded upon an analytical approach to cost allocation which uses advanced modeling to assign the significant costs associated with interconnecting large load customers to the new rate class.

II. Background

A. The Company's Proposed Modifications to Rate GDP

On February 7, 2025, the Company filed an application for *ex parte* approval of certain amendments to the Company's Rate GDP. Specifically, the Company proposed a set of changes to Rate GDP "that are necessary to serve new data center load while protecting other customers." Connolly Direct, 3 TR 80. The terms and conditions proposed by Consumers include: minimum contract term, minimum billing demand, financial security stipulations, exit fee and administrative fee requirements, and provisions relating to an increase or decrease in contract capacity. Connolly Direct, 3 TR 82.

A number of parties, including the CEO, moved to intervene and to request the Commission order a contested case proceeding. On March 13, 2025, the Commission determined

that “*ex parte* treatment of the application is not appropriate. The electric load of new data centers presents unique and significant cost implications, and the development of an evidentiary record to consider the [Company’s] application is prudent and reasonable.”² Accordingly, the Commission granted the requests for a contested case proceeding.

B. Michigan Climate Laws

In 2023, Michigan enacted landmark climate legislation that included a 100 percent clean energy requirement for Michigan utilities by 2040 and amendments to the state’s existing renewable portfolio standard (“RPS”). *See* Public Act 235 of 2023. Specifically, the RPS refers to the amount of energy generated by renewable sources or procured through renewable energy credits (“RECs”) in a given year. MCL 460.1028. A renewable energy credit is a “credit granted under a certification and tracking program established” by law “which represents generated renewable energy.” MCL 460.1011(c). Any given renewable resource generates both energy and a renewable energy credit, which can either be bundled or sold separately. The renewable portfolio standard is expressed as a percentage of the total energy sold by the utility in that year. Michigan law now requires that between 2024 and 2029, 15 percent of Consumers’ total retail energy sales derive from renewable sources or RECs, then 50 percent from 2030 through 2034, and 60 percent in 2035 and thereafter. MCL 460.1028.

In addition, the 2023 legislation created a clean energy standard (“CES”) that requires 80 percent clean energy from 2035 through 2039 and then 100 percent clean energy from 2040 onward. MCL 460.1051. Clean energy encompasses renewables plus nuclear, hydrogen, and natural gas with carbon capture. Utilities may meet 20 percent of the 2035 target and 40 percent

² Case No. U-21859, Order at 2 (March 13, 2025).

of the 2040 target with non-renewable clean energy, provided they submit compliance plans via Integrated Resource Plans (“IRPs”) approved by the Commission.

In sum, Michigan law mandates distinct targets for renewable and clean energy that apply to all electric utilities, including the Company. Because these targets are expressed as a percentage of the Company’s overall electric retail sales, the large new loads anticipated by the proposed amendments to Rate GDP will materially affect Consumers’ ability to meet these statutory requirements.

C. Unprecedented Future Load Growth

The Company has indicated that it has received inquiries from potential large loads totaling over 15 gigawatts of electric load. Connolly Direct, 3 TR 81. As the Company observed, “[t]his is an unprecedented volume of requests and potential load growth for a relatively new industry.” *Id.* Company Witness Connolly testified regarding the urgency to implement its proposed tariff measures “to protect other customers from stranded assets and increased costs should the data center load not materialize after resources are committed to serve them or the load is not in place for as long as expected.” *Id.*

While that pipeline of inquiries is extraordinarily large (in fact, nearly double the Company’s current peak load), the Company has testified to “a more probable” forecast of 2.65 GW of large load additions in the next decade, which would nonetheless significantly impact Consumers’ clean energy obligations and generation portfolio. *See* Ex. CEO-3. As CEO Witness Siddique testified, Consumers would need to procure an additional 12 million RECs by 2035 to serve an additional 2.65 GW of large load while complying with Michigan’s RPS. Siddique Direct, 5 TR 776. According to CEO Witness Siddique this translates to some combination of renewable resources equal to 4,748 MW of wind or 5,987 MW of solar. *Id.*

III. Legal Standard

The Commission must set “just and reasonable rates.” MCL §§ 460.54; 460.557; 460.6g(2); 460.6v(4)(a)(c). “This can be accomplished only by balancing the interest of public utility investors and the consuming public.” *City of Detroit v. Pub. Serv. Comm’n*, 308 Mich. 706, 715 (1944). Michigan courts give the Commission wide latitude to implement just and reasonable rates, and this includes the discretion to identify certain issues as important to the specific circumstances of a given case and to elevate certain issues over others. The Commission “may, in the exercise of its discretion, determine what factors are relevant in a particular case.” *In re Consumers*, 278 Mich. App. 547, 563 (2008) (citing *Attorney General v. Pub. Serv. Comm’n*, 231 Mich. App. 76, 79 (1998); *Attorney General v. Public Service Comm. #1*, 133 Mich. App. 719, 725-26 (1984)). Further, the Commission is “not bound by any particular ratemaking method and can make pragmatic adjustments in order to respond to particular circumstances of any given case.” *Id.*

While rates cannot unlawfully discriminate, it is fully within the Commission’s power to approve terms and conditions that apply only to certain classes of customers, as Consumers seeks approval for here: “A rate proposal can be lawful and non-discriminatory even though it creates a rate class for which only some customers qualify and even though there are differences in rates among customers within the rate class. Rational differences in classifications and rates can be non-discriminatory, provided appropriate standards are used to differentiate customers.” *Re Consumers Power Co.*, 161 P.U.R.4th 1, 11 1995 WL 333169 (Mich. P.S.C. May 9, 1995).

IV. The Company’s Rate GDP Modifications for Large Loads Must Include Clean Energy Terms

As discussed above, Consumers recognizes the “unprecedented” nature of the interconnection requests from data centers in its territory. Connolly Direct, 3 TR 81. In response,

the Company laudably proposed a set of tariff provisions that aims to protect itself and its customers from stranded or misallocated costs tied to infrastructure buildout to accommodate data centers. However, the Company set its sights too narrowly in its application by omitting any consideration of or preparation for the clean energy obligations that will result from the projected load growth.

According to CEO Witness Siddique, the 2.65 GW of new load the Company projects to be “more probable prospects,” Ex. CEO-3, will require “12 million RECs from *new* renewables in 2035, necessitating 4,748-5,987 MW of equivalent wind or solar capacity in 2035.” Siddique Direct, 5 TR 776 (emphasis added). New load of this magnitude coupled with the increased RPS obligations in future years associated with already-expected load growth mean that the Company will “need to procure 31.77 million RECs in 2035, which is more than an eightfold increase from the 3.8 million RECs it has procured in 2023.” Siddique Direct, 5 TR 777.

Despite these dramatic increases, the Company chose not to include any provisions or terms in its proposed tariff to address the clean energy impacts of large load growth. Instead, Consumers puts its faith in the existing regulatory scheme, particularly future IRPs and renewable energy plans to ensure compliance with its RPS obligations. Specifically, in rebuttal testimony, Company Witness Conolly asserts that “[t]here is no need to address the means by which Consumers Energy will meet renewable and clean energy requirements in this case, particularly when there are other cases specifically designed to address those issues, including the Renewable Energy Plan (‘REP’) and IRP processes.” Connolly Rebuttal, 3 TR 102.

As the CEO and other parties addressed in testimony, the Company cannot afford to wait for future cases to begin preparing for the significant new clean energy obligations that will result from connecting extremely large new loads to its grid. First, the next REP and next IRP will not

resolve until several years in the future, and delaying action until then will squander the next few years when the Company could proactively begin to procure additional renewable resources in time to meet the standard of 50 percent renewable generation by 2030. Second, the scale of extremely large loads like data centers and the anticipated speed of their addition pose unique challenges to the grid that must be addressed up front. Based on these challenges, the Company should begin procuring renewables of all types at a more rapid clip. This is what the CEO refer to as a “no regrets” approach to renewables—utilizing all types and scales of generation resources, utility-scale and DER, front of the meter and behind the meter, to provide the best pathway to meet RPS obligations and decarbonize the system, while lowering costs by allowing old, costly fossil fuel plants to retire.

The Commission must reject the Company’s effort to exclude consideration of clean energy from the proceeding because doing so would waste the head start Consumers has in responding to the challenges created by data center load growth. In many ways, Consumers proposed its tariff at right time, *before* a rush of signed contracts. If the Commission adopts the Company’s view—that RPS compliance and generation procurement can wait for the next IRP or REP—it may find itself facing too steep a challenge to overcome. As observed by CEO Witness Siddique, “[t]he utility’s next IRP will start in 2026, and the new generation authorized in that docket may not come online until many years later. Delaying action until the next IRP could lead to rushed procurements, higher costs, and more risk for Consumers Energy and its customers.” Siddique Direct, 5 TR 782. In other words, making these decisions in the next IRP starts to push up against the state’s 2030 mandate of 50 percent renewable energy. When considered in light of the timelines associated with planning, building and interconnecting new generation resources, 2030 will be here all too soon. Instead, the Commission can order the Company to use the time in

the interim to set itself up for success, through simple clean energy terms discussed in more detail below, which will put the Company on the path to hit its RPS obligations in future IRP and REP while serving these new large loads.

Further, the record demonstrates that large load additions pose unique challenges that require a decisive, proactive response from Consumers. As a preliminary matter, it is important to put the load requests discussed by the Company into context. Company Witness Connolly discusses 15 GW of data center load inquiry, compared to 7.6 GW of the Company's current peak demand. Deupree Direct, 5 TR 976. Even the more "manageable" 2.65 GW figure the Company has used in some estimates represents roughly 35% of the Company's current peak load. Large load additions will require significant investment in the already-strained transmission and distribution systems. Siddique Direct, 5 TR 779. For example, the Company projects that 2.65 GW of new load will require between \$730 to \$780 million in transmission buildout (excluding the transmission resources required to serve new generation buildout). *See* Ex. DCC-1. The infrastructure and materials necessary to service these new customers will also tax supply chains and continue to drive increased prices. Siddique Direct, 5 TR 779. These challenges will also bleed into the Company's renewable procurement efforts. The Company is already constrained in its renewable buildout by the MISO interconnection queue and its own ability to execute on projects.³ In addition, CEO Witness Siddique identified "physical infrastructure limits, siting barriers, and workforce limitations" as other constraints on the Company's ability to meet its RPS obligations, even prior to the introduction of significant new load. Siddique Direct, 5 TR 781. As stated by CEO Witness Siddique, "[t]hese challenges create significant risk that data center load will come

³ For example, in its last IRP, Consumers employed a 500 MW "build limit" on solar per year. *See* Siddique Direct at 13.

online faster than Consumers can build and interconnect the renewable energy generation needed to serve that load in line with the state’s [RPS] mandates.” *Id.*

Witness Siddique recommended several additions to the tariff which would increase transparency around the customer’s clean energy plans and facilitate further renewable development and quicker interconnection. Specifically, Witness Siddique recommended that (1) large load customers provide clean energy sourcing plans; (2) load interconnection reform (discussed in more detail below); (3) the Company ensure large load customers have access to the VGP program; and (4) large load customers maintain an ongoing responsibility to provide reporting around usage and clean energy. Siddique Direct, 5 TR 783-84. Witness Siddique elaborated on the concept of a clean energy sourcing plan, which would “describe the customer’s behind-the-meter measures...and any other clean energy procurement strategies” at the time that the customer applies for service. *Id.* This sourcing plan could be used by the Company to help facilitate interconnection review and the Company’s own clean energy procurement strategy in its future REP and IRP cases. In discovery, the Company confirmed that large load customers on Rate GPD would be eligible for the VGP program. *See Ex. CEO-9.* By implementing these tariff provisions regarding clean energy, the Company will ensure it stays on the path towards complying with the State’s renewable mandates.

V. The Commission Should Order the Company to Develop a Transparent Load Interconnection Processes for Large Loads

The Company acknowledges that data center driven load growth presents an “unprecedented” challenge to its standard operations. Connolly Direct, 3 TR 81. The CEO and other Intervenors introduced testimony and other evidence to further demonstrate the sea change that data centers represent. *See e.g.,* Siddique Direct, 778-81; Dauphinais Direct, 5 TR 812; Jester Direct, 5 TR 865.

Such a dramatic grid transformation will require updated processes and strategies to respond and best serve the system. Consumers is moving down that path by introducing the tariff provisions in this case which protect the Company and its customers from some of the risk of stranded assets. In order to fully accomplish that objective, however, the Company must go further to reform and standardize the process by which it studies and interconnects new large loads to the grid. The Company acknowledges that its approach to load interconnection has gone unchanged “for a long time.” 3 TR 174. The Company’s approach predates the emergence of new extremely large customers like data centers, which present unique characteristics and risks to the system. Nor does it appear that the Company has any plans to revise its interconnection approach in response to these new circumstances and risks. 3 TR 171.

The CEO learned much of what it knows about the Company’s load interconnection approach through discovery and cross-examination in this case. The Company did not testify about the topic, nor did it rebut the CEO’s direct testimony. The Company’s witness in the case, Laura Connolly, conceded that she is “not involved in the interconnection process,” at the outset of questioning. 3 TR 154. Thus, while limited, the evidence in the record on how the Company currently analyzes and makes decisions about interconnection of new load is sufficient to highlight the shortcomings of the Company’s current approach.

The Company’s current approach reflects the previous decades of flat and decreasing customer demand, where decisions about load interconnection did not raise the significant cost and grid impacts posed by potential data center load. Currently, “[t]he Company [does] not maintain a load interconnection queue.” Ex. CEO-10; 3 TR 154. The Company describes its current approach to determining interconnection schedules and costs as follows:

The Company balances requested ramp up schedules with procurement timelines for both distribution and transmission delivery (based on information provided by

our transmission providers) for each project request to determine an achievable schedule. With large load requests, procurement, timing and feasibility for electric supply sufficiency are also considered.

Id. The Company's engineering department leads this effort, with assistance from the energy supply team and the economic development department. 3 TR 163. The Company "evaluates each project independently," to establish a timeline and set of costs for interconnection. Ex. CEO-11. As explained by Consumers Witness Connolly that means, "first committed...first served." 3 TR 165. The Company defined "committed" as when a "customer would have a signed rate contract and a signed [Extraordinary Facilities Agreement ('EFA')]." 3 TR 159. An EFA "outline[s] the engineering need to serve the customer...includ[ing] the detailed engineering costs to serve the customer." 3 TR 157. Once a customer signs a rate contract and an EFA, it is "committed" and any future customers would be evaluated with the committed customers as part of the baseline. 3 TR 165.

The Company's current approach to interconnecting load does have some positive aspects which should be preserved in future processes. In particular, Company Witness Connolly acknowledged that there is "some collaboration between the Company and the potential customer around achievable schedules and cost." 3 TR 156. Relatedly, the Company proposes demand response and "other ways to reduce costs [to customers] prior to signing" the rate contract and EFA. 3 TR 161. Finally, through the EFA process, "before a customer signs an agreement, the Company has a general sense of cost and what it needs to do in order to interconnect the customer." 3 TR 157-158.

At the same time, much of the way Consumers treats prospective new customers, and the load interconnection process must change as the Company adapts to the new reality of significant load growth driven by the addition of a discrete number of very large load customers. For starters,

the Company concedes that it “has not maintained a load interconnection queue.” Ex. CEO-10. The lack of a queue relates directly to how the Company evaluates projects “independently.” Ex. CEO-11. While this approach may have worked when the Company would receive relatively small-scale load interconnection requests, it will not translate to the 15 GW of prospective demand the Company claims in its pipeline. Connolly Direct, 3 TR 81. Simply put, each prospective customer is not created equally in terms of cost and impact to the Company’s system. When dealing with such massive load additions and the associated infrastructure investments, the Company must develop new technical standards that are tailored to the particular characteristics of these extremely large customers. This could include, for example, a “batched” interconnection queue, which allows the Company to compare projects and determine which projects will cost the least and be the best “grid citizens”⁴ by providing benefits to the system in the form of load flexibility or demand response. Updated load interconnection standards could also account for: location (*i.e.* optimal siting decisions), projected transmission and distribution infrastructure upgrades, demand flexibility, and the customer’s ability to bring its own resources to the grid like DERs, battery storage, or front-of-the-meter resources through the VGP program. During cross-examination the Company conceded that it currently does not consider behind-the-meter resources or demand flexibility in the load interconnection process—either in determining how much load to serve, or in the cost to serve the customer. 3 TR 160-161; 173-174.

The CEO recommend a working group process to update the Company’s load interconnection standards. This process should include discussion of “expedited” interconnection pathways for large loads which would bring their own clean generation resources and commit to participate in interruptible load or demand response programs. Siddique Direct, 5 TR 783.

⁴ See Case No. U-21224, Direct Testimony of William D. Kenworthy (Aug. 24, 2022) at 30.

Specifically, Witness Siddique recommended that Consumers “prioritize the interconnection of data center customers that demonstrate through their Clean Energy Sourcing Plans that their load would not negatively impact Consumers’ compliance with its [renewable energy] obligations and/or otherwise pose less of a burden on the Company’s system.” *Id.* Witness Siddique justified this approach on a cost basis, explaining that “[l]oad paired with behind-the-meter renewable generation, energy storage, or load flexibility poses less of a burden on the Company’s grid, requires less upgrades to the Company’s systems, and incurs less costs to comply with the Company’s [RPS] obligations.” *Id.* The Company, the large load customers, and other ratepayers all stand to benefit from the incorporation of these considerations into the interconnection processes: Consumers and its existing ratepayers benefit from more efficient grid infrastructures investments, while large load customers can benefit from cost savings and speed to interconnection.

The CEO stand by this recommendation. The Company should work with stakeholders to develop updated load interconnection standards that address the unique characteristics of extremely large loads and minimize costs to its customer base. A formalized interconnection process can also provide transparency benefits, as potential customers would have better information as to how their load applications will be considered by the Company and could develop their applications accordingly. The CEO recommend that the Commission order a workgroup on load interconnection process which culminates in a reformed process which the Company would submit to the Commission for approval.

VI. The Commission Should Require the Company to Establish a New Rate for Data Centers Based on Marginal Cost Modeling

Several parties to this case made recommendations that the Commission order the Company to create a new rate for data center or large load customers. *See Palmer Direct, 5 TR*

881; Dauphinais Direct, 5 TR 813. Consumers Energy pushed back on this request, stating, yet again, that this proceeding is not the proper forum for such action. Instead, the Company claims it will “propose a Large Load rate solution in future rate case proceedings, and other parties can make rate proposals in future rate cases as well.” Connolly Rebuttal, 3 TR 100. The Company objects to creating a new rate at this time because it claims it needs at least three years of data to “develop a load shape for cost allocations.” *See* Ex. MEC-11.

Because of the cost of the significant grid transformation required to serve gigawatts of new load, and the potential that those costs may spill over unjustly onto the larger rate base, the CEO support other parties’ proposals to create a new rate class for data centers. Additionally, the CEO support MNSC Witness Palmer’s recommendation to require IRP-style modeling to determine the marginal costs associated with data centers, and to use such modeling to reconfigure cost-of-service and cost allocation. Palmer Direct, 5 TR 902. The CEO also support Witness Jester’s recommendation that data centers be served from bespoke resource portfolios, with costs directly assigned to customers. Jester Direct, 5 TR 860. According to Witness Siddique, MNSC’s recommendation “ensures fairness, transparency, and compliance with legislative requirements that prohibit cost-shifting to residential or other customers.” Siddique Rebuttal, 5 TR 797. Further, the recommendation to create a new rate class would “facilitate more precise tracking and assignment of costs, better align cost recovery with cost causation, and help ensure that the addition of large, unique loads does not adversely impact other customer classes.” Siddique Rebuttal, 5 TR 798.

While Consumers favors a wait-and-see approach on a new rate class, the evidence in the record demonstrates that now is the time to implement concrete rate reform *prior* to new load interconnecting. While Consumers’ proposals in its application are an important step in that

direction, the Commission must go further and order the Company to create a new rate class, supported by marginal cost modeling.

VII. Conclusion

The CEO recommend that the Commission:

1. Order the Company to include clean-energy related terms in its modified Rate GPD, specifically:
 - a. The Company will ensure that large load customers have access to the VGP program.
 - b. Potential large load customers will provide a Clean Energy Sourcing Plan as part of the interconnection process prior to a commitment.
 - c. Potential large load customers will provide ongoing reporting around clean energy and usage.
2. Establish a workgroup focused on the load interconnection process which will culminate in the Company providing to the Commission for approval a revised load interconnection process for large load customers.
3. Order the Company to create a new rate class in its next rate case for large load customers which will be based on IRP-style modeling to understand the marginal costs associated with the addition of large load costs.

Respectfully submitted,



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Dated: August 21, 2025

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing *Opening Brief of The Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar* was served by electronic mail upon the following Parties of Record, this Thursday, August 21, 2025.

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